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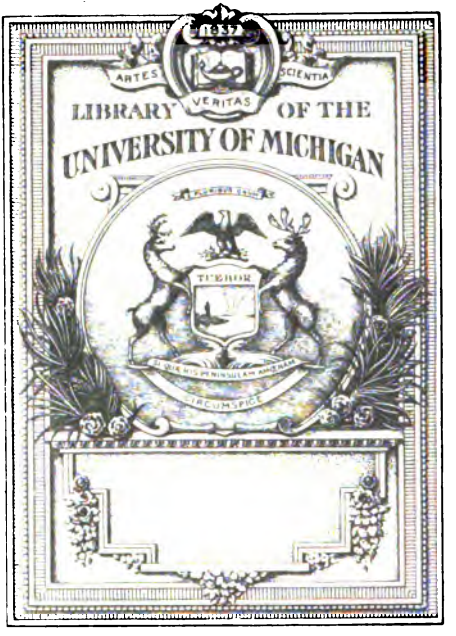
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HISTORY OF AUSTRALIA.

VOL. II.

HISTORY

OF

AUSTRALIA

BY

G. W. RUSDEN

AUTHOR OF "HISTORY OF NEW ZEALAND"

IN THREE VOLUMES

VOLUME II.

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CHAPTER XI.

GOVERNOR DARLING.

GOVERNOR DARLING arrived in New South Wales in December 1825, after touching at Hobart Town and conveying the instructions of the Colonial Office as to the separation of the island government from that of New South Wales. He was a military man and much influenced by military ideas. A presentiment that he would be so influenced seems to have been instinctive with the leaders of the popular party,—the emancipists and self-styled patriots. Brisbane had warmed their sympathies by cordiality on his departure, and they were in no humour to welcome his supplanter. The incoming Governor was received like the outgoing king:

> "As in a theatre the eyes of men
> Are idly bent on him that enters next . . .
> E'en so, or with much more contempt, men's eyes
> Did scowl on Richard. No man cried, 'God save him!'"

Darling bore with him a Royal warrant appointing his Legislative Council, consisting of the chief military officer (Stewart, who had in that capacity administered the affairs of the colony in the brief interval between the departure of Brisbane and the arrival of Darling); the Chief Justice; Archdeacon Scott; the Colonial Secretary, Mr. Alexander Macleay (who arrived in January 1826, and was to succeed Major Goulburn); John Macarthur; Robert Campbell; and Charles Throsby. The Executive Council was to consist of the same persons, with the exception of the three last-named colonists. It must have been

with strange feelings that Macarthur and Campbell on the 20th December, 1825, were sworn as members of the Legislative Council. In 1808 Campbell had been one of the few respectable persons who abetted Governor Bligh when, under the guidance of Crossley the convict, Macarthur was lawlessly imprisoned. Campbell had given evidence in favour of Bligh at the trial of Colonel Johnston. In 1825, both Macarthur and Campbell were styled "trusty and well-beloved," in a warrant under the hand of the King appointing them members of the Legislative Council of the colony; and the warrant was subscribed by Lord Bathurst, from whom it had been so hard to wring consent that Macarthur should be permitted to return to the colony in 1817. The warrant of 1825 was revoked in 1827, and a new one was issued; but the change was merely formal. Stewart was no longer named in it, but the "officer next in command to the Commander of the Forces" was placed in the Council, and Colonel Lindesay (39th Regiment) in that capacity took his seat. The other members were re-appointed. Soon after Darling's arrival it was thought advisable to present an address to him, and a public meeting was called, at which William C. Wentworth was the moving spirit. He admitted that the new Council was an improvement on its predecessor, but advocated agitation for an elected Assembly, and sounded the popular note of taxation by representation. Darling replied to the address in general terms; and, without committing himself to either party of colonists, proceeded with his new Colonial Secretary to introduce administrative reforms which previous laxity had made necessary. In this, as in his task of raising the tone of society, the Governor was to look for aid from the Colonial Secretary, who was noted as a man of science, and in addition to his services under the Crown had been for many years the highly esteemed honorary Secretary of the Linnæan Society, which unanimously ordered a painting of him by Sir Thomas Lawrence. That two persons freshly arrived from the mother country should concur in removing from the public offices some relics of the convict element introduced by Macquarie and untouched by Brisbane, can hardly be wondered at; yet Darling and Macleay incurred the odium of the emancipists by weeding the departments. The order which they had not

found they attempted to secure by a system of checks and counter-checks. They effected much good by infusing a higher sense of duty among officials. The emancipist and self-styled patriot party turned savagely on the Governor, and Dr. Wardell and William Wentworth ere long vented their fury in the columns of the 'Australian.' After this introduction of the Governor to his new sphere of duty, the progress of discovery during his rule must be alluded to.

In 1827, Allan Cunningham combined his botanical researches with a spirit of discovery. He traversed with six men the affluents of the Nammoy and the Gwydir, discovered Darling Downs, and after a severe journey returned to his starting-point at the head of the Hunter river. Two years afterwards he went to Moreton Bay by sea; and, exploring the sources of the Brisbane river, connected his two expeditions, and named Cunningham's (Pass or) Gap in the cordillera near Darling Downs. Darling selected, for the command of another exploring party, Captain Charles Sturt of H.M. 39th Regiment. With this leader Mr. Hamilton Hume was associated. In 1828, a time of drought, they started for the interior, where Oxley had found unending marshes and expanse of water. They found a waste of dry polygonum scrub with patches of reeds and a small muddy channel to which the Macquarie had dwindled. An attempt by Sturt to follow its course failed. Hume made excursions, and after much hardship the explorers suddenly came upon a large river, which they named the Darling. To their horror they found the water salt. They were in sore straits for themselves and their cattle; and the unerring skill of Hume was never more welcome than when he discovered, not far from their camp, a pool of fresh water which relieved their distress. Striking the Darling first in long. 145·33 E., lat. 29·37 S., they descended many miles without finding any alteration in the character of the river. They turned and explored northwards. They again encountered the Darling, salt as before. After four months and a half they returned to the settlement, having ascertained that the Macquarie and Castlereagh rivers, and, inferentially, the Nammoy, Gwydir, and the Darling Down rivers, flowed into this new great river, now called the Darling, below the confluence of the rivers converging from the slopes of the cordillera.

Sturt was again commissioned in 1829 to explore the more southern rivers. The Lachlan had been essayed vainly by Oxley. Sturt sought the Murrumbidgee, whose waters, fed from the Snowy Mountains, were to bear him to a new and unexpected terminus. Hume could not accompany him, though asked to do so. Not only his skill in the bush but his knowledge of the natives caused regret at his absence. On the Darling Sturt and Hume had seen many natives, and no hostilities had taken place. Mr. (afterwards Sir) George Macleay was Sturt's companion and friend in his new undertaking. Forming a depôt on the Murrumbidgee, near its junction with the Lachlan, Sturt with a chosen band started down the river in a boat. They passed the junction with the river which Hume had named after his own father; but Hume was not there to recognize it, and Sturt unfortunately, but unwittingly, discarded Hume's patronymic, and named the river the Murray,[1] in honour of Sir George Murray, then Secretary of State. The boat bore them bravely downwards; they saw hundreds of natives; they were saved from an attack of one tribe by the heroism of another native (of a tribe recently seen), who dashed across the river and arrested the uplifted arm of a leader. They returned in 1830, amidst much privation and in great prostration, and Sturt published his narrative which proved him as modest as brave. They had traced the united Murrumbidgee, Murray, and Darling waters into Lake Alexandrina, and thence to the sea in Encounter Bay. They had connected their journey across the land with the labours of Flinders, and the footsteps of other white men. They had found on the coast that the natives had seen white men before, and, unlike their brethren in the interior, had been made to dread fire-arms. Sturt's people were watchful and returned safely; and in all his explorations Sturt never took the life of a native. Governor Darling acknowledged Sturt's services by an official notice of his exploits, and the Colonial Secretary, Mr. Macleay, had the pleasure to see his son's name included as that of one who had done the State some service in the expedition. A sad fate awaited the next explorer who visited Lake Alexandrina. Captain Barker, a brother officer of

[1] The colonists have an unfortunate tendency to supplant the aboriginal names. How much better a name is Kuraula than Darling for a river!

Sturt, had succeeded Captain Stirling as commandant at Raffles Bay, and when that settlement was, like its neighbour at Melville Island, abandoned in 1829, Barker was stationed at King George's Sound. Governor Darling instructed him to hand over the last-named settlement to Captain Stirling, who had become Governor of (Western Australia or) Swan River, and then to make a more accurate survey at Lake Alexandrina than time or provisions had made possible for Sturt. The gallant officer, who was reputed to be well acquainted with the aborigines, and kindly disposed towards them, fell a sacrifice to the hatred inspired by less humane visitors. Being the only one of the company who could swim, he crossed the channel, which connects the lake with the sea, alone, taking his compass on his head. His companions saw him no more. The gallant Sturt bewailed the loss of one so true and just, so intelligent and dauntless, so kind and indefatigable. Sturt thought it probable that the "cruelties practised by sealers had instigated the natives to take vengeance on the innocent as well as on the guilty." Lieutenant Kent, the second in command, prevailed upon a sealer at Kangaroo Island to go with him and a native woman to inquire concerning Barker's fate. She was told that he had been speared and thrown into the sea.

Numerous attempts to form settlements during the governments of Brisbane and Darling evinced the desire of English Ministers to exclude foreign nations from Australia, as well as to furnish fresh outlets for British enterprise. There is documentary evidence to show that to the promptness of Lord Liverpool's Administration it was due that only the flag of England was permitted to float over Australian soil. The traditions of the sway of Pitt, who first erected it there, still prevailed in the Cabinet which comprised Mr. Goulburn, Lord Bathurst, the great Peel, and the brilliant Canning. What Governor King implored the Addington Ministry to do in order to extinguish French pretensions in 1802, while Lord Liverpool (then Lord Hawkesbury) was Minister for Foreign Affairs, the same Minister while Premier sanctioned in 1826, when those pretensions were believed to be revived.[1]

[1] I observe that credit has been given to Lord John Russell for asserting the British claim. He may have made it in words, after it had been estab-

Early in 1826 Lord Bathurst wrote publicly and privately to Governor Darling. Establishments at Western Port and Shark Bay were contemplated. These, with the post at Melville Island, were to secure the whole territory from the intruding French who were sending out discovery ships. Darling promptly pointed out that as the western boundary of his Government was the 129th degree of East longitude, "it will not be easy to satisfy the French, if they are desirous of establishing themselves here, that there is any valid objection to their doing so on the West Coast; and I therefore beg to suggest that this difficulty would be removed by a Commission . . . describing the whole territory as within the government." Darling at once sent expeditions to occupy Western Port and King George's Sound. He confidentially enjoined the officers in command to be careful, if they should see the French, "to avoid any expression of doubt as to the whole of New Holland being within this government, any division of it which may be supposed to exist under the designation of New South Wales being merely ideal, and intended only with a view of distinguishing the more settled part of the country. Should this explanation not prove satisfactory it will be proper, in that case, to refer them to this Government for any further information they may require."

If the French should be found landed,—"you will, notwithstanding, land the troops (two officers with eighteen rank and file) agreeably to your instructions, and signify that their continuance with any view to establishing themselves, or colonization, would be considered an unjustifiable intrusion on His Britannic Majesty's possessions."

The French corvette 'L'Astrolabe' arrived in Sydney soon afterwards. Darling was informed by her commander that the expedition was scientific only, but he wrote that it was perhaps fortunate that the British ships, 'Warspite,' 'Success,' and 'Volage,' were lying in Sydney. That fact, with a knowledge that H.M.S. 'Fly' had sailed for Western Port, might make the French captain "more circumspect in his proceedings than he otherwise would have been."

Captain Wright took charge of the settlement at Western

lished in fact; but Lord Liverpool's Ministry had placed the matter beyond doubt, and there was no room for anything afterwards except words.

Port. Captain Wetherall of H.M.S. 'Fly' assisted in forming it. Hamilton Hume was asked to go, but "impaired health prevented his complying." Hovell (his fellow-traveller in 1824) was engaged to accompany Captain Wright. Some sealers who had crossed from Van Diemen's Land were found at Phillip Island, where they had two acres of wheat and maize growing well.

Captains Wetherall and Wright furnished exhaustive reports. The former spoke of the "prospect of rendering Port Phillip in some degree tributary to the establishment" at Western Port. He soon perceived that Mr. Hovell was at fault. The difference of opinion between Hovell and Hume as to the point they reached in 1824 has been related. When Hovell had an opportunity, in 1826, of testing the point he made further blunders.

Wetherall reported: "It is very evident that (Western Port) is not the country described by Messrs. Hume and Hovell, and that they could never have been there, as their accounts are not applicable to a single point either of it or to the anchorage."

Wright wrote (27th March, 1827) that the country was scrubby, and that his own and Hovell's researches had failed to reveal the fine pasture land seen in 1824. Hovell had been "occupied twelve days in looking at the country north between Western Port, the mountains, and Port Phillip, but never got to the latter." Wright resigned his charge to his successor, Lieutenant Burchell, and Hovell prosecuted his researches, which were duly reported to the Colonial Office. He thought he had found Hume's terminus on the Bay near "a very extensive fresh-water marsh, twelve to fifteen miles long, separated from Port Phillip by a narrow ridge or bank of sand not more than from two to three hundred yards wide." This was the Carrum Swamp, which bounded Tuckey's explorations in 1803 under Colonel Collins; but though Hovell, in one of his reports (27th March), alluded to Tuckey's narrative, he appears to have been incapable of perceiving that Tuckey's land journey from Collins' Camp was perforce confined to the eastern shore of Port Phillip, while the journey of Hume was entirely on the west. Having, as he thought, "near the head of the Bay, ascertained the spot which terminated the journey of Mr. Hume" and himself

—he returned, unconscious of the fact that between him and any part of the country traversed by Hume, ran the ever-flowing Yarra-Yarra river, and that the waters of Port Phillip lay between him and the place he thought he had reached.

It must seem strange to those who know the country that he could stand on the ridge of sand which he described, near the Carrum Swamp, without recognizing on the eastern side of Port Phillip the Station Peak of Flinders, close to which he passed with Hume, and which Hume learned was called Willanmanata by the natives.

Darling saw no encouragement in the reports he received. He thought Hovell's services of little value. He told Lord Bathurst (April 1827) that it appeared "that Western Port does not possess the necessary requisites for a settlement," and "should your Lordship consider that the object of taking formal possession has been answered," the persons sent to establish the settlement might perhaps be withdrawn. He "had not found any disposition on the part of the inhabitants to settle that part of the country." Lord Goderich, in July 1827, authorized the abandonment of the place, and early in 1828 Darling withdrew the whole establishment. Regret was expressed at the Admiralty at the deserting of a situation which guarded the communication with Van Diemen's Land. But in Van Diemen's Land John Batman, one of those men who (on account of the faculty possessed by Hamilton Hume of divining their way through unknown tracts) were called "good bushmen," had in January 1827 applied for a grant of land at Western Port. He induced Mr. J. T. Gellibrand to join him. They owned valuable sheep, and proposed to take live stock to the value of from £4000 to £5000 to the spot, where Batman would reside. But Governor Darling's interest in the matter had vanished with the questioning of French pretensions.

He wrote: "Acknowledge, and inform them that no determination having been come to with respect to the settlement at Western Port, it is not in my power to comply with their request." Batman, thus foiled for the time, nursed his project until 1835, when he was more successful.

The settlement formed at King George's Sound was not productive of immediate results, but so magnificent a harbour could

not be derelict. Major Lockyer, the commandant, selected the site of Albany, where a military post was kept until, in 1830, it was transferred from the control of New South Wales to the young colony formed at Swan River in Western Australia, whose fortunes claim attention.

Captain Stirling, R.N., had joined in exploring expeditions in New South Wales, and had subsequently formed a settlement at Raffles Bay. He had also surveyed Swan River itself in 1827. His report led to a project to form a settlement there when French intrusion was anticipated. Mr. Barrow wrote from the Admiralty to the Colonial Office (1828), that with Western Port, King George's Sound, and Swan River "on the south and west, and Raffles Bay on the north, I think we may consider ourselves in unmolested possession of the great continent."[1]

Financial considerations arrested the proposed official settlement. But private speculators stepped in. Mr. Thomas Peel, with several others, offered to provide shipping to carry ten thousand emigrants to Swan River at the rate of £30 a-head. In return they asked for grants of land, of which they calculated the value at eighteenpence an acre. They were thus to receive four millions of acres for three hundred thousand pounds. They offered two hundred acres free of rent to each male emigrant. The scheme was not carried out, but it led to another in which Mr. T. Peel was the leader, and which the Government approved.

Captain Stirling was to be Governor of the first free settlement in Australia. No convicts were to go thither. Immigrants were to receive, in the order of their arrival, grants of land

[1] The Earl of Ripon in 1833 came to the conclusion that the anxieties of 1826 were groundless. He wrote: "The present settlement at Swan River owes its origin, you may perhaps be aware, to certain false rumours which had reached the Government of the intentions of a foreign power to establish a colony on the West Coast of Australia. The design was for a time given up entirely on grounds of public economy, and would not have been resumed but for the offer of a party of gentlemen to embark in an undertaking of this nature at their own risk upon receiving extensive grants of land, and on a certain degree of protection and assistance for a limited period being secured to them by the Government (Parliamentary Paper, 1840).

proportioned to the capital they were prepared to invest. They were to satisfy the Governor as to the capital they possessed, and to receive forty acres for each £3 of invested money; but they were not to receive the grant in fee simple until they had expended at the rate of eighteenpence an acre in improvements. There were conditions of reversion to the Crown in case of default of expenditure. To Mr. Peel were assigned a quarter of a million, with possible extension to a million, of acres on condition of taking out emigrants, at a graduated scale, by which for all persons over ten years of age Mr. Peel was to receive 200 acres. The Governor was enabled to acquire a hundred thousand acres. He landed on the 1st of June, 1829, to found the new settlement; and before the end of 1830, thirty vessels had arrived with more than a thousand claimants for acres. Captain Stirling did what he could to satisfy them; but what he did was of no avail. In proportion as a man had more land he was in more difficulty as to its use.

Every man's neighbour was in dim distance. Spread over illimitable tracts, and commanding no labour, the puzzled landholders had neither roads nor markets. They gazed in stupor at their unprofitable wastes. The old problem of labour assumed a new phase under new conditions in a new land. Land—the presumed wealth of the colony—could purchase no labour, and yet land was the commodity with which it had been hoped to buy everything. Contractors for building, surveyors, and others were to receive payment in the same barren element of exchange. Many immigrants had property of some kind, but few carried with them the means of building houses, or commanding labour. Land in proportion to attracted capital was the loadstone; but the attracted capital in vain sought congenial employment. There was no hope of profit from it. Some settlers fled from a colony whose hardships were intolerable. The few sheep and cattle seemed likely to fall a prey to the teeth of the few colonists, and starvation would ensue. Some who fled retained their grants nominally.

Mr. Peel, after taking £50,000 and three hundred servants to the colony, was left without a servant, while his property was wasted; and when it had been wasted, the servants who had abandoned him returned, starving, to demand employment and

food. He, the victim of an experiment to which he had so largely contributed, was as helpless as the men who had abandoned him. The inexorable laws of correlation between capital and labour had never been more notably violated, or more notably avenged themselves. Governor Stirling was driven to seek assistance from England in an emergency which neither he nor his employers understood.

The root of the failure was to be explained by a man then rising into notoriety—Edward Gibbon Wakefield. Commencing an inauspicious career by being convicted of abduction in 1826, (unattended, however, by the coarser constraints often resorted to by abductors), this remarkable man became the life of a Colonization Society, whose labours were to influence, though not control, the Colonial Office, the Parliament, and the colonists themselves. They furnished ideas; and in a world of red tape and routine, to furnish an idea is to create. Wakefield's first trumpet-sound in the arena of colonization was an anonymous letter,[1] published in London in 1829. Grasping the subject with a master hand, embellishing his brochure with touches of power and the raciness of reality, he arrested attention and partly compelled belief. Society, officials, settlers, labourers, politics were woven into his work. "The Opposition," he said,

"consists of emancipated convicts who have obtained wealth and importance; of the children of convicts, and of certain free immigrants—men of fiery, and in many cases of generous, tempers; of whom some cannot tamely brook subjection in their own persons, some hate oppression in the abstract, and some are filled with a high ambition, like that which urged the robber-shepherd to found Rome. These are the leaders of four-fifths of the population. They are bent upon procuring for the colony a government of colonial origin. They want trial by jury and a Legislative Assembly. They talk even of perfect independence. They are rebels, every one of them, at heart; and nothing but a sense of weakness deters them from drawing the sword."

[1] 'A Letter from Sydney, the principal town of Australasia. Edited by Robert Gouger, together with the Outline of a System of Colonization.' London: Joseph Cross, 18 Holborn, 1829. Mr. Bischoff in a work on Van Diemen's Land (London, 1832) remarks (p. 76) upon Wakefield's evidence before a Committee of the House of Commons, on the convict system, that Wakefield was "from his long confinement in Newgate well qualified to form a correct opinion."

He was less unerring as to the prospects of wool-growing. Production, he thought, must soon outpace demand. The latter was then supposed in England to be limited to thirty million pounds, and Wakefield foresaw that Australia would soon produce far more. He proclaimed the evils of the convict system, and the curses it entailed. He depicted a possible "extension of Britain." The crime and misery produced in Britain by excess of people in proportion to territory, might be reduced if not annihilated by a system which would place within reach of British population the excess of territory in the colonies. In one place people hungered for land, in the other land panted for people. He would not make the colonies "new societies, but *extensions* of an old society." If "this plan be too magnificent for execution may we not construct a smaller edifice on this model? In plain English—if the principles here suggested be correct, why should they not be reduced to practice upon whatever scale?"

In an Appendix he supplied terse articles.

1. That a payment in money of —— per acre be required for all future grants of land without exception.

2. That all land now granted, and to be granted, throughout the colony, be declared liable to a tax of —— per cent. upon the actual rent.

3. That the proceeds of the tax upon rent and of sales, form an Emigration Fund, to be employed in the conveyance of British labourers to the colony free of cost.

4. That those to whom the administration of the fund shall be entrusted, be empowered to raise money on that security, as money is raised on the security of parish and county rates in England.

5. That the supply of labourers be as nearly as possible proportioned to the demand for labour at each settlement; so that capitalists shall never suffer from an urgent want of labourers, and that labour shall never want well-paid employment.

6. That in the selection of emigrants, an absolute preference be given to young persons, and that no excess of males be conveyed to the colony free of cost.

7. That colonists providing a passage for emigrant labourers, being young persons and equal numbers of both sexes, be entitled to a payment in money from the Emigration Fund, equal to the actual contract price of a passage for so many labouring persons.

8. That grants be absolute in fee without any condition whatsoever, and obtainable by deputy.

9. That any surplus of the proceeds of the tax upon rent and of sales, over what is required for emigration, be employed in relief of other taxes, and for the general purposes of Colonial Government.

If these Articles of Wakefield's belief were true, the principles on which Western Australia had been founded were false. The year 1829 witnessed the publication and the experiment. For this reason they are here placed side by side. The Colonization Society, which sprung from the anonymous author's ideas, will properly be dealt with hereafter.

It is sufficient to mention him now in connection with the occupation of new lands by the Government.

While the land of Australia was thus parcelled out, the treatment of its original inhabitants was of the customary kind. On the Hunter river, in former times, the commandant had availed himself of their services in capturing runaways and bushrangers. Backed by a knowledge of his support they had shown a courage and confidence not exceeded by their skill in tracking. The usual injuries by white men produced the usual results.

A native whom the authorities described as Jackey Jackey (with two *aliases*) was seized on the Upper Hunter in the winter of 1826, was taken seventy miles to Wallis Plains (Maitland), and was on the 31st July handed to Lieutenant Lowe, 40th Regiment, the officer in command. His fate became the topic of rumour not altogether condemnatory.

Brave men as well as others had arrived at the cowardly conclusion that the brutalities of the whites were inevitable, and their consequences must be condoned or neglected by the Government. Some were insolent enough to declare that it was the dispensation of Providence that the black race must be "stamped out" by the white.

Darling's own conduct deserves censure. The Attorney-General, in August 1826, reported that there was a common statement that the military had taken upon themselves to "put men to death in cold blood, and that the magistrates do not at all interfere." He was convinced that Darling could not be aware of these things. He appealed to him to stop them. Darling did little. The crime had occurred at the Hunter river, and it was to a resident in that district that Brisbane had written, that if the blacks were shot there was no occasion

to report the fact. The natives there were numerous and warlike, however, and to the disgust of some residents seemed disinclined to submit patiently to be shot. Settlers sent to the Governor a petition praying for protection "from the incursions of numerous tribes of black natives, armed and threatening death to our servants" . . . "until the threats and murderous designs of the natives shall have subsided, the lives of our labourers and our property will be exposed to the revenge and depredation of these infuriated and savage people."

Darling replied (5th September) that nothing was to be feared, and the settlers should show no apprehension. "Vigorous measures among yourselves would more effectually establish your ascendancy than the utmost power of the military. . . . I strongly recommend you to unite and take measures for your own defence, and you may be satisfied that in any exertion you may make, you shall receive every necessary support." He observed that some of the memorialists resided in Sydney, and recommended them to live on their properties. "It would have the effect of preventing irregularities on the part of your own people, which, I apprehend, is in many instances the cause of the disorders committed by the natives."

Thus stirred to unlawful acts, the settlers obeyed. The natives retaliated. Bannister reported (7th September, 1826) that "extremely violent proceedings were going on, on both sides." Darling ordered a detachment of the military to the district, to "punish the natives agreeably to my instructions on this head, which, under present circumstances, will, I have no doubt, prove the most effectual course."

Bannister, "placed in a situation of great difficulty," asked for a copy of the Instructions. He thought "that the indiscriminate slaughter of offenders, except in the heat of immediate pursuit, or other similar circumstances, requires preliminary solemn acts; and that to order soldiers to punish any outrage in this way, is against the law, which is powerful enough to guard the public peace from any permanent aggression." Darling vouchsafed no reply, and in the following month Bannister was out of office.[1]

[1] Saxe-Bannister published documents connected with these events, 'New South Wales in 1824-5-6' (Cape Town: 1827).

The high-handed murders which took place can be only faintly pictured by the imaginations of those who have never known the characters of the convict class in whose hands fire-arms were freely placed, and over whose doings there was no control. Bannister was cognizant of the atrocities committed, and was determined to denounce them in England. The Governor thought some explanation expedient, and wrote to the Secretary of State (6th October, 1826). He spoke of outrages committed at the Hunter.

"A report having reached me that a native, who was apprehended by the mounted police, as having been concerned in the proceedings above alluded to, had been shot while in custody, I immediately gave orders that the matter should be investigated by the magistrates of the district. This order, after some delay, occasioned by the absence of Lieutenant Lowe, was acted upon."

Darling brought the matter before the Council with no further result than can be gathered from the following equivocal passage in his despatch: "There can be no doubt of the criminality of the natives who have been concerned in the recent outrages, but though prompt measures in dealing with such people may be the most efficacious, still it is impossible to subscribe to the massacre of prisoners in cold blood as a measure of justifiable policy." In one sense every Governor except Phillip had subscribed to massacres which he did not check or punish, and Darling was no exception to the bad rule.[1] It is fair to him to mention that when Captain Wright reported (26th December, 1826) his arrival at Western Port to form a settlement, he added (after saying that the natives kept aloof): "As I am aware that it is your Excellency's wish to conciliate them as much as possible, I have not allowed them to be pursued or molested in any way."

The murder of Jackey Jackey, which Governor Darling confessed it was impossible to "subscribe to as a measure of justifiable policy," had been perpetrated with little or no attempt at concealment. Thomas Farnham delivered Jackey Jackey to Lieutenant Lowe one evening, and if his evidence, afterwards given, was true, heard Lowe on the following morning

[1] The author was personally acquainted with many of the aboriginal survivors of the authorized raids in the Hunter river district, and with some of those who were settlers at the time.

order that the prisoner, without trial or investigation, should be shot. Another man said he saw Jackey Jackey tied to a tree and shot. Both witnesses concurred in the statement that three soldiers having fired, the fourth stepped up and put the poor creature out of his misery. The body was buried by two men in obedience to the order of a sergeant. The constable was interrogated by a magistrate (Mr. Close, late of the 48th Regiment), and concealed the fate of the prisoner.

Lieutenant Lowe's absence postponed inquiry for a time; but knowledge shared by so many persons could hardly be stifled. Two men, to remove means of proof, removed the body of the murdered man. The man who had buried it saw them do so, and consented not to tell the truth unless put upon oath.

It was not until May 1827 that Lieutenant Lowe was put upon his trial in Sydney before a military jury. Dr. Wardell defended him, and contended that the Court had no jurisdiction to try a British subject for an offence against a native. A native was neither entitled to be tried before the Criminal Court as a British subject, nor to a jury *de medietate linguæ* as a foreigner. He was beyond the pale of all law, and the inference was that no atrocity against him was punishable. Chief Justice Forbes over-ruled such wild insensible words, and the trial proceeded. The constable Farnham, the other witness, and one of the men who buried the slain man, gave their evidence. Witnesses for the defence contradicted portions of the evidence, and declared that it was untrustworthy.

The Chief Justice told the jury that there was some mystery in the case, but much was open to conjecture. None of the witnesses had been uncontradicted, and all had at different times made different statements. If the jury believed that Lowe had acted as was imputed they would find him guilty; if they had any doubt arising as to the credibility of the witnesses they would give the prisoner the benefit of the doubt. They did so by retiring for a few minutes, and returning with a verdict of Not Guilty. No man was astonished.

To vindicate the majesty of the law, a black man was put upon his trial at the same session. As none of his friends were present, and none could have given evidence if present, "Black Tommy" was hanged without delay. The hearts of the white

men might accuse them of murder, but legal proof was not available. Amongst those who held the diabolic doctrine that the shooting of a black fellow-creature was not an offence, no witnesses against a white murderer could be found. Perjury seemed venial after murder.

It is sad to reflect that early mismanagement at Western Australia caused for a time as disgraceful relations between the two races as raged in the East. There appears to have been little difficulty in establishing communication between the settlers and the tribes of Swan River. The men upon whose heads a price was set by the Government were sometimes those whose intercourse with the whites enabled them to converse with them. An accidental publication casts light upon the time. Mr. Moore held a civil appointment at Perth, and was also engaged in pastoral pursuits. He wrote letters to England, which were published, without his revision, as 'Letters and Journals' from Swan River.[1] He thus described the state of affairs in May 1833.

"A murder was committed by the natives in consequence of the following provocation. Some time ago a man who had come from Van Diemen's Land, when escorting a cart, saw some unoffending natives in the way. 'D—n the rascals,' he said, 'I'll show you how we treat them in Van Diemen's Land,' and immediately fired on them. That very cart, with two men who had been present at the transaction, was passing near the same spot the day before yesterday, when they were met by about fifty natives who had lain in ambush, and the two men were deprived of life so suddenly, that Mr. Phillips (who had been about two hundred yards behind) was hardly in time to see Yagan thrust a spear into one of them. . . . A reward has been offered for the head of Yagan whether dead or alive."

One Midgegoro was taken, and there was "great perplexity as to what should be done with him. The populace cry loudly for his blood, but the idea of shooting him with the cool formalities of execution is revolting." Thus Mr. Moore wrote on the 20th May. On the 22nd, he added, Midgegoro was "shot at the gaol-door by a party of the military. We are all anxious to see how the others will conduct themselves after this execution, *if*

[1] London: 1834.

they discover it[1] . . . there were none of them present at it." On the 27th, Mr. Moore, with two others, saw Yagan with several natives in sight of the military quarters. Yagan was wary, but bold. To his inquiries as to the fate of Midgedoro Mr. Moore would give no reply. Yagan said he would take life for life. "There is something in his daring which one is forced to admire," Mr. Moore said. Though close to the encampment, neither Moore nor his companions attempted to capture the chief; but gave information after he was gone. A strong band was sent out, but it was not by them he was killed. A white lad, who was received in a friendly manner at the camps of the natives, went behind Yagan and shot him.[2] The assassin threw away his gun, and ran for his life, but Yagan's companions pursued and speared him.

Mr. Moore reported that the man who afterwards preserved the head of Yagan also flayed from the body a portion of the skin. Englishmen might well be shamed by the doings of their countrymen thus made known to them on the unimpeachable authority of a gentleman who held a high position in the colony.

Fortunately for the national reputation, the second Governor of Western Australia, Mr. John Hutt, established a new order of things, though not before many dark deeds had been done such as Mr. Moore described.[3]

[1] The italics are Mr. Moore's. This publication excited some shame in England: and Captain F. C. Irwin, who commanded the military in Western Australia, published another work in 1835. He seemed to lament what had occurred; but strove to soften the narration by pointing out that the authorities had satisfied themselves (as indeed Mr. Moore had mentioned) that Midgegoro had committed several atrocities, and that Mr. Moore was not in 1833 Advocate-General of the colony, but became so at a later date.

[2] Mr. P. Chauncey's valuable Appendix to the work on the Aborigines, published by the Government of Victoria.

[3] Colonel Charles J. Napier, to whom the Government of South Australia was offered in 1835, published in that year a work upon Colonization, in which he denounced the treatment of the natives in Western Australia. He narrated how a party of soldiers, with the Governor, slew "from twenty-five to thirty" and "several of the children":—he described Yagan as the "noble warrior of the Swan River," no less conspicuous "for generosity than for his courage," and added that "to the hanging of *native* murderers, if their sentence was a just one, there can be no objection; but to the *not* hanging of the *settler* murderers, there are very great objections; . . . the savage has no knowledge of our law . . . the settler acts contrary to the laws of his country; knowing what is right he does wrong, and does so from

As Saxe-Bannister's resignation has been referred to, it may be well to deal with it and dismiss him from these pages. Chief-Justice Forbes owed him ill-will for the advice to the magistrates which (in 1824) excluded ex-felons from jury lists: but Forbes was not paramount with Darling, who, as a military man and a loyal subject, could not tolerate the opprobrious epithets which Forbes was reported to apply to the King's Ministers, and even to a monarchical form of government. Forbes also associated freely with those members of the emancipist party who early assailed Darling's alleged severity towards the convict class. It was to himself that Bannister owed his fall. It has been seen that though on good terms with Brisbane he thought himself justified in refusing to draft a Bill indemnifying magistrates involved in the "Torture Proceedings." He told Darling that "if the Governor is doing what seems to the Attorney-General to tend to bring the peace and welfare of the colony into danger, he is bound to state his opinion to the Governor." Darling replied that he would ask his advice on legal matters. "On all others, I alone am responsible, and I can have no desire to place you in so unpleasant a predicament as that of giving opinions on subjects with which you have no right to interfere."

Deeming his salary inadequate, and having (he said) no time to eke out his emoluments by practising at the bar, Bannister had tendered his resignation unless the Secretary of State would sanction an increase of salary. Lord Bathurst took him at his word, and announced that "since it appeared to be his wish" a successor had been appointed. But though taken at his word Bannister complained that Darling ill-treated him. After receiving Lord Bathurst's letter he told Darling in round terms that a certain 'Gazette' notice about an alleged crime was incorrect, and that "if the Governor interposes his authority out of time and incorrectly, the safe course of the law is in danger of being perverted." Darling (who had previously offered to relieve him of his duties in order to enable him to attend to his private affairs) wrote in reply (October 1826): "The acceptance of your resignation having been notified by the Secretary of State, I

a brutal disposition; he therefore appears to be a fit subject for the heavy hand of law . . ."

shall make immediate arrangements for placing the duties in other hands."

The retiring Attorney-General[1] having vainly requested the Governor to prosecute the 'Australian' newspaper, placed his personal effects on board the ship which was to carry him from the colony, spoke on the 20th October for nearly six hours in a case in which he prosecuted Howe, the editor of the 'Sydney Gazette,' for libel; fought a duel with Dr. Wardell on the 21st, and departed on the 22nd, from a wondering society.

The New Constitution Act of 1828 removed the short-lived

[1] Bannister considered himself harshly treated, and printed a lengthy defence for private circulation. He was bitterly attacked in Dr. Wardell's newspaper, the 'Australian,' and was angry with Darling for declining to institute a Government prosecution of the publisher. He had previously (June 1826) taken upon himself to caution the Governor against countenancing the press. Darling, it appeared, had invited Dr. Wardell to Government House. The Governor replied with some hauteur that it was impossible to suppose that the office he held was in any degree under the control, or subject to the animadversions, of any one in Bannister's position. Neither the King nor his Ministers had thought it necessary to prescribe his hospitalities, and without meaning personal offence he could not persuade himself that the Attorney-General was invested with any such authority. Darling, in declining to prosecute the 'Australian' newspaper for libel, said that the article complained of had not appeared till Bannister's resignation had been notified, and "the Government could not interfere in such case without establishing a precedent which might subject it to serious inconvenience." Bannister, irritated at Wardell's unfounded insinuations as to his obtaining his appointment by undue favour, fought his duel with Wardell. It is just to state that in a letter to Darling, written at sea, Bannister regretted that he had not had "courage to refuse" Wardell's challenge. Bannister was not without ability. James Macarthur (son of John Macarthur), writing to his brother in England at this period, said: "Bannister's speech (at Howe's trial) seemed to petrify his enemies, the chief of whom I need not tell you is Mr. Forbes. He gave a luminous outline of his public conduct from the first moment of his application for the office until the day of his retirement, in which he clearly showed the punctilious correctness of all his actions, and contrasted them most ably with the conduct of Forbes. On the Torture Indemnity Bill he was most happy both in clearing himself from imputation, and in turning the tide of public indignation upon the Chief Justice. There seemed to be but one feeling on this subject in the minds of the audience." (The speech was made two days after the appearance of the already-quoted article in Wentworth's and Wardell's paper, which admitted that the *ex post facto* law to indemnify tortures was the "most desperate of all desperate powers of legislation." The audience might well be unanimous on such a point.)

institution which had in 1825 compelled the Chief Justice to adopt the dangerous remedy of an *ex post facto* law, chiefly in order to shield his friend Douglass. No grand jury was continued or established by the Act 9 Geo. IV. cap. 83. The fifth section enacted that "until further provision be made as hereinafter directed for proceeding by juries, all crimes, misdemeanors, and offences cognizable in the said Courts respectively, shall be prosecuted by information in the name of His Majesty's Attorney-General." It might safely be predicted that after the warning received by the Governor and the Chief Justice in the matter of the Torture Indemnity Bill of 1825, no provision to revive grand juries would be submitted to a Legislature while those functionaries had influence there, and while (by the 21st clause of the Act) it was imperative that no law or ordinance could be passed, the proposal of which had not been first laid before the Council by the Governor himself. Thenceforward the protection of grand juries was withdrawn from the land until its re-appearance in the youthful South Australia in 1837.[1] The jury of presentment, which in English history preceded the jury of traverse, was destroyed. The administration of justice became a department of State. The safeguard which Englishmen had fondly cherished as their heritage from the days of Alfred,—which Blackstone believed to be guaranteed in terms under Ethelred,[2]—which did not sink with the fall of Harold, and was embodied in the Great Charter as the right of every freeman, in words which the great Chatham

[1] South Australia afterwards (1852) abolished them by special enactment. The convenience of administering the law by means of a departmental officer outweighs with an Executive Government the wider but less visible advantage of interesting the people in every branch of its administration.

[2] "Exeant seniores duodecim thani, et præfectus cum eis et jurent super sanctuarium quod eis in manus datur, quod nolint ullum innocentem accusare, nec aliquem noxium celare" [circa an. 990]. Laws of Ethelred. The reader may find in the luminous work of Stubbs on English History how under the Norman line the liberties of England were guaranteed by successive kings. In 1194 by the Articles of Visitation the recognitors (or grand jury) of presentment were specially described. Four knights were chosen from the county. They by their oath chose two lawful knights of each hundred or wapentake. The two so chosen, chose ten knights of each hundred or wapentake, "or, if knights be wanting, legal or freemen," "so that these twelve may answer under all heads concerning their whole hundred or wapentake." It was after the visitation of 1194 that the petty jury to traverse the presentment of the grand jury came into use.

pronounced worth all the classics, and the Bible of the English Constitution,—trial by jury in completeness,—was thenceforward indefinitely taken from Englishmen in New South Wales. It may be viewed as a marvellous proof of the sway of custom that not within half a century of its disuse has any serious effort been made to restore it. Neither responsible government, nor abuse of power by a Government, has to this day roused the people of New South Wales to the evils they undergo by its loss. It is not only bad to lose the superior guarantee for due administration of the law; it is worse that the people should not be trained from the highest to the lowest in the labour of administering it. The taint has spread downwards in legal proceedings, and numerous stipendiary magistrates have in great part extruded from petty sessions the unpaid magistrates who once efficiently distributed justice and friendly counsel to their neighbours. Dry routine has superseded union of feeling. A bond, which was as wholesome for the country gentleman in stirring his sympathies as it was for his poorer neighbours to profit by them, has been rent asunder by the craving for formality and the servility of a Government Department. But whether Forbes had or had not reason to be satisfied with the extinction of grand juries, there could be no doubt as to the destruction of his devices with regard to common juries at Courts of Quarter Sessions. The argument with which he had overthrown the resistance of magistrates in 1824—that as the Act of 1823 was silent the common law must be held to prevail—was in express words rendered impossible by the Act of 1828. The 17th section enacted that offences should be tried "before Courts of General and Quarter Sessions respectively in such and the same manner" as that "prescribed with respect to trials before the Supreme Court."

When the new Constitution was imported, a Royal Warrant at the same time enlarged the Legislative Council. By law the number was to be not less than ten, nor more than fifteen. Chief Justice Forbes, Archdeacon Scott, Colonial Secretary Macleay, Attorney-General Baxter, Collector of Customs Cotton, Auditor-General Lithgow, Lieut.-Col. Lindesay, were the official members. John Macarthur, Robert Campbell, Alexander Berry, Richard Jones, John Blaxland, Captain Phillip P. King, R.N. (son of the former Governor), and Edward C. Close, one of the

worthiest men in the land,[1] were the unofficial gentlemen of the colony. The Governor himself presided over the Council, of which the full number was fifteen. The Royal Warrant provided that in case of death of a non-official member the vacancy should be filled from the following leading colonists:—J. T. Campbell, Hannibal Macarthur (nephew of John Macarthur), G. Wyndham, A. B. Spark, T. McVitie, G. T. Palmer, Archibald Bell, William Ogilvie, or William Macarthur (a son of John Macarthur). In September 1829, Archdeacon Scott having retired, his successor, the Rev. W. G. Broughton (who owed his promotion to the great Duke of Wellington), took his seat in the Council, of which for many years his talents made him the most distinguished member.

Governor Darling's new Council passed a General and Quarter Sessions Act on the 29th September, 1829. It was thereby enacted that "free persons" should be tried "before the Courts of General and Quarter Sessions, and seven commissioned officers of His Majesty's sea and land forces," in like manner to that prescribed in the Imperial Act for the Supreme Court. By section 5 of that Act (9 Geo. IV. cap. 83), it was provided that, until other order might be taken, military or naval officers should be the jurors, and in default of the requisite number, seven, the Governor should nominate magistrates to act as jurymen. Thus the emancipist element was entirely excluded from juries at

[1] Edward Charles Close was born 12th March, 1790, at Rangamatty near Calcutta. His father was a merchant in India. He was a posthumous child, and was taken to England when eight years old, and lived with his maternal uncle, Charles Streyncham Colinson, Sheriff of the county of Suffolk, at The Chantry, Ipswich. He was gazetted ensign in the 48th Regiment, 8th February, 1808, with which regiment he commenced and ended his military career. He was present at the battles of Toulouse, Orthes, Nivelle, Vittoria, Albuera, Busaco, and Talavera, and escaped unhurt. He went to New South Wales with the 48th Regiment, 1817, and settled in Morpeth, 1821. He was the first chairman of the Maitland Bench of Magistrates, and the first warden of the Maitland district. He received three public testimonials and addresses while living, and the people of the Maitland district erected a memorial window in St. James's Church, Morpeth, to him after his death. He died 7th May, 1866. On one of the Peninsular battle-fields as he heard the groans of the dying he resolved that he would, if ever possessed of means, build a church for the spiritual consolation of his fellow-creatures. He lived to fulfil his resolve at Morpeth, Hunter river.

the Quarter Sessions Courts. The local legislature had power to pass jury laws, but the application of juries, even in the Supreme Court, was limited by the Imperial Act to cases in which "either of the parties" in an action might be desirous of having issues of fact tried by a jury constituted under any colonial law or ordinance. The Court, moreover, had power to award or to refuse trial by jury. The Supreme Court was composed of one or more Judges and two assessors, magistrates. In all criminal trials the juries were military. If the emancipist party desired to open the door of admission to juries they were compelled to work in the direction of so framing the local jury laws as to serve their purposes. Their hopes rested on the Chief Justice. During the discussion of the Jury Bill Archdeacon Broughton became a member of the Council (16th Sept.). The Chief Justice was active in modelling the measure. It was referred to a sub-committee on the 24th September, and was passed on the 9th October. It provided (sec. 4) that in all actions wherein the Court should award trial by jury, jurors should be residents in or within twenty-two miles from Sydney, having a clear income from real estate of £30, or from personal estate of £300; and that "no man not being a natural-born subject of the king, and no man who hath been or shall be attainted of any treason or felony, or convicted of any crime that is infamous (unless he shall have received for such crime a pardon, or shall be within the benefit of some Act of Parliament, having the force and effect of a pardon under the Great Seal for such crime), shall be qualified to serve on any such jury." In construing this clause the magistrates excluded all emancipists who had not received a full royal pardon. The emancipist class fumed when they saw that no man who had been convicted was summoned. An order was applied for, calling on the sheriff to show cause against a mandamus to compel him to insert the names of certain emancipists. Wentworth and Wardell argued for the mandamus, against the Solicitor-General on the other side. The application was dismissed on the ground of irregularity, but the Chief Justice allowed it to be made known that in his opinion the magistrates were wrong in excluding from the lists persons whose terms of sentence had expired.

It may be mentioned parenthetically, that in 1830 Governor

Darling himself invited the Council to consider the propriety of introducing generally trial by jury. The Secretary of State wished for their opinions, and Darling was not indisposed to introduce trial by jury. He heard there was an intention to petition Parliament on the subject, which seemed unadvisable, as the Secretary of State would naturally wait for the opinions (of the Council) which he had invited. The Council thereupon passed an amending Bill. There were two dissentients, but the majority would not consent to the delay involved by inquiry. Disqualifying every one who had undergone a colonial or second conviction of "treason, felony, or other infamous offence," the Bill left all others whose sentences had expired, or who had received full pardons, eligible as jurors. When the magistrates excluded the names of all whose sentences had expired, the Governor had ascertained the opinion of Forbes that persons who had "served their terms of transportation" were eligible as jurors. The opinion was, with important exceptions, confirmed by three Judges, Forbes, Dowling, and Burton, who were asked by Governor Bourke in 1834, at the unanimous request of the Legislative Council, "whether a person who has been convicted of a transportable offence, and whose sentence has expired, or been remitted by an absolute or conditional pardon, is legally qualified to sit upon a jury in England." The careful reply which was then furnished was dictated by no political feeling. It analyzed the various enactments in force by the dry light of reason. Free pardons, or a conditional pardon of which the condition had been performed,—servitude of punishment inflicted on a person convicted of felony not punishable with death, remission of sentence ratified by the king,—left the convict eligible, "because such offences create no disqualification, but only incapacity of the offender so long as he is deprived of his liberty." But persons convicted of perjury under 5 Eliz. c. 14, could only by Act of Parliament be restored to eligibility, and those convicted of transportable offences accounted infamous (such as perjury at common law, subornation of perjury, and forgery in some cases), who had not received free pardon, would not be held eligible in England; nor would those convicted of infamous offences below the degree of felony and not transportable, of the nature of the *crimen falsi*.

With this well-digested opinion no man quarrelled. But with the earlier and more sweeping verdict of Forbes many were discontented. Although the local juries were at that time confined to civil issues, it would be difficult to exaggerate the heart-burnings which were created in the community. What! an untainted man sit to dispense justice by the side of an emancipated felon! Flesh and blood would not endure it. Mr. Robert Campbell, junior (although his father supported Forbes in many matters) protested from the jury-box against the disgrace. He was over-ruled; but the moral sense of the community recognized that he had reason on his side when the notoriously shameless were seen seated arrogantly by the side of the reputable. The advocates of the emancipist party were driven to allege that, in order to discredit the class, the framers of the jury lists included its specially unworthy members.

A singular phase of opinion was observed for many years. There was a preference amongst litigants for military juries. Their probable ignorance of commercial affairs was assumed to be outweighed by their sense of honour and superiority to undue influence. But the leaders of party discarded such considerations. They seized on every occasion to increase the rancours which existed. Once when a military jury had concluded its labours, and a civil jury entered the box, the new-comers found that their predecessors had made offensive inscriptions aimed at emancipist jurors and Judge Forbes. Complaint was made, the unknown libellers were censured by Judge Dowling, and their handiwork was obliterated. But it was engraven on the hearts of many, and the scars were not removed for years. It is fair to record the fact that the libellers had been provoked by coarse denunciation of themselves as a class.

It has been mentioned that in response to a despatch from Brisbane, Lord Bathurst directed (July 1825) the Governor to prepare, at "the earliest opportunity," a law to control the press, and insist upon periodic licenses before publication of any newspaper. Darling communicated with the Chief Justice on the subject, and showed him the despatch. Forbes hesitated to certify under the Act 4 Geo. IV. cap. 96, that the issue of a revocable license as suggested by the Governor was not repugnant to the law of England, so far as the circumstances of the

colony admitted its application. Without Forbes' certificate (sec. 29) the Governor could neither lay before his Council nor pass into law any measure. The determined but courteous Governor requested the Judge to state how far he felt himself "at liberty to sanction the measures directed by Lord Bathurst." The astute Forbes evaded the question by saying he was "ready to certify any ordinance so far as I am authorized by law." Darling sent him draft Bills, and Forbes declined to certify one which made licenses resumable at the Governor's pleasure. He begged that legislation might be postponed till the law officers in England could be consulted. He was anxious to avoid setting his hand "solemnly to a certificate that a measure recommended by so high an authority as the Secretary of State is repugnant to the law of England." Darling replied that the safety of the colony was endangered by the licentiousness of the press, and duty forbade delay during tedious reference to England. He sent the Bills back as those which His Majesty's Government had directed, and which Forbes as Chief Justice was required to sanction. But Forbes was resolute not to certify a measure which he said was not consistent with the laws of England, and which he knew would subject his intimate associates to the discretion of the Governor. Darling caused Bills to be prepared in a different form. The revocable license was abandoned. On the 24th April, 1827, he laid two measures before the Council. One—to prevent mischiefs arising from publications by "persons not known," and to regulate publications, and restrain "abuses arising from the publication of blasphemous and seditious libels." The other—to impose a duty on newspapers. They were both read a first time on that day. The first measure required that no one should publish a newspaper after the 1st May, 1827, until an affidavit had been lodged setting forth the names of the printer and publisher, with the title of the paper and the place of printing. The Colonial Secretary moved that the name of the editor should be inserted in the affidavit. Forbes and Campbell vainly opposed the amendment. A stringent clause was passed to the effect that on a second conviction for publishing a blasphemous or seditious libel, "tending to bring into hatred or contempt the Government of the colony," the offender might be banished for such term of years as the Court might order.

Forbes trembled for his impetuous friends, Wardell and Wentworth, who might fall within the mesh. He pleaded successfully for postponement till the following day. On the 25th the Council passed the Bill, Forbes being present. The Bill to impose a duty on newspapers was again postponed. On the 2nd May Macleay moved, and Colonel Stewart (Lieutenant-Governor) seconded, a proposal that the duty should be fourpence. The Archdeacon moved, and Macarthur seconded, an amendment that it should be sixpence. Fourpence was the sum fixed upon. Forbes was absent. On the 3rd May the Bill was passed, with a third Bill to "prevent the publishing of books and papers by persons not known." Forbes was again absent. He was not idle, however.

The impost of fourpence was deemed a crushing one upon the publications of his friends. His certificate was required, and he resolved to refuse it. Meantime the Acts had been promulgated. On the 30th May the Council met. Forbes was present with four others; but the Governor sent a message by the Colonial Secretary, regretting that he could not meet the Council. On the 31st neither Darling nor Forbes attended. Again the Colonial Secretary carried the Governor's regrets to five members who attended. The manœuvres which led to the abortive sittings can be surmised by reading the following memorandum[1] which the Council directed the clerk (Douglass, the friend of Forbes) "to enter in the Council Book."

"It having been communicated to the Council that his Honour the Chief Justice has refused to re-certify the Bill No. 3 for imposing a duty on newspapers, which passed the Council with the blank filled up with the duty of fourpence on the 3rd May, the Council judge it expedient to record the following facts relative to the progress of that Bill through the Council. First, that when the Bill was laid before the Council by the Governor on the 24th April, the Chief Justice being present, the clerk read the Bill, stating that the sum of fourpence was marked on the margin in pencil, to which no objection was made by the Chief Justice. Secondly, that on the 2nd May the Bill was read a second time and the clauses were read *seriatim*. Upon the introduction of a clause for the preventing of the forgery of stamps, the clerk was desired to wait on the Chief Justice at the Court House

[1] Votes and Proceedings, New South Wales.

where he was presiding at a trial, and request to know if he saw any objection to the insertion of that clause, which the Chief Justice said he would certify. The clerk was desired to summon the Chief Justice and Mr. Campbell to attend the next day. On the 3rd day of May the Colonial Secretary upon taking his place in the Council said, the Chief Justice was obliged to go to Court, but that he was happy to say he had seen the Chief Justice, who stated to him he had no objection to the Bill."

On the same day a Government notice was promulgated to the effect that the publication of the Duty on Newspapers Act was premature, and that the Act was suspended. Forbes had saved his friends from the impost, but had not raised his own character. The Council did not meet again for about seven months. It was noticeable that Governor Darling, though thus thwarted by Forbes, did not, like Bligh or Macquarie, indulge in vituperation of his thwarters. He maintained a decorous bearing to all. Not even a libel on his brother-in-law (resented by a challenge to Dr. Wardell in March 1827), and the exchange of several shots, provoked the Governor to a display of ill-feeling. A contemporary letter from Macarthur to his son in England, places the matter beyond doubt. On the 27th May, 1827, he wrote:

"The Governor maintains a profound silence. . . Four newspapers are published, all in the convict interest, and the editors are all desperate radicals, alike shameless and unprincipled. Our Chief Justice is their idol, and on him they rely for protection whether their libels be aimed at individuals or against Government. Fortunately this dangerous man has reached his mark. . . . Colonel Dumaresq says without reserve that Forbes is the most artful and dangerous man he ever knew. . . . The most intimate companions of Forbes are Wardell, Wentworth, and Dr. Douglass. . . . He has been heard to say that he would have no objection to sit down with ————,[1] ————, or ————, or any other emancipist gentleman. . . . amongst all respectable persons he is detested. . . . You can have no idea of the operation of these fire-brand papers upon the common people, and every one not connected with the convict interest admits that the most dangerous consequences are to be dreaded. Their

[1] One of the characters whose ill deeds were exposed by Commissioner Bigge. There is no object in reprinting the name here.

present most apparent effect is discontent, determined idleness, and in many cases insubordination and open contempt towards their masters and the magistracy. Forbes did not attend the Council when the Bill was passed. All the other members were unanimous, though several doubt as I do whether fourpence is sufficient to prevent the paper from being bought by the prisoners."

Without accepting Macarthur's conclusions all must admit that his evidence as an eye-witness is valuable. There could have been no coolness towards Macarthur in the "profound silence" maintained by the Governor, for the 'Gazette' shows that in June 1827, Macarthur's sons James and William were made magistrates. Though the Governor kept his own counsel he was not blind to the danger of retaining the tool of Forbes in the confidential post of clerk to the Council. An honourable man of any opinions may be trusted, but in such a position a willing creature without high feelings can hardly fail to be mischievous. As early as August 1826 Lord Bathurst confirmed Douglass in the situation of Commissioner of Requests, which Darling had "selected for him in preference to that of Clerk of the Council." A military *locum tenens* held the office for a short time, but it was afterwards filled (in 1828) by the arrival of Edward Deas Thomson, who was for fifty years to fill a foremost place in public life in Sydney, and in the esteem of all who valued sterling patriotism, ability, and courtesy. Douglass soon afterwards misconducted himself in such a manner that he was content to obey an order of the Governor directing him to leave the colony in May 1828. It is proper to mention that the Law Officers in England thought that Forbes correctly executed his duty in refusing to certify the Licensing Act, and in "acting upon the opinion he had formed" with regard to the Stamp Duty. The Colonial Office, however (sec. 21, 22 of the Constitution Act of 1828), withdrew from the functions of the Chief Justice a power which gave him a veto upon legislation, and which tended to make him a partisan. The feelings of Forbes were perhaps soothed by the fact that the withdrawal was not confined to his own case. It extended to Van Diemen's Land. Meantime, though the Stamp Duty Bill was shelved, the laws which had been passed were not allowed to slumber.

The editor of the 'Monitor,' Mr. E. S. Hall, was repeatedly

convicted, fined, and imprisoned. The publisher of the 'Australian' newspaper, in which Wentworth and Wardell gave vent to their wrath, was fined £100 and imprisoned for six months for a statement that in the case of the soldier Sudds, the Governor had substituted his will for the law. The unseemly quarrel spread to the Church. Hall's pew in St. James's church was closed against him. The undaunted Hall wrenched the door open. By the following Sunday the Archdeacon had caused the whole of the pew to be boarded over as with a deck, and Hall scrambled to the top of it. The Governor entered into the ignominious strife still further, by withdrawing Hall's assigned servants (one of whom had been directed by Hall to disobey the Governor's order), and by refusing to renew permission to occupy some Crown lands previously held by Hall. These matters were submitted to the Secretary of State, who desired the Governor to inform Hall that on all points the Governor's procedure was deserving of support. The only gleam of graciousness discoverable in these events is that, on the accession of William IV., Hall, then in prison, was released by Darling's unexpected order. The contentions of the time were not limited to the Courts. In the duel between Dr. Wardell and the Governor's brother-in-law, which was fought a few weeks before the Bills to control the press were introduced by the Governor, the lawyer underwent Colonel Dumaresq's challenge, and though both antagonists were grazed by the first discharge, two more shots were exchanged before the seconds could persuade Dr. Wardell to make a verbal apology, and induce the cool but determined Dumaresq to accept it. A Turf Club of which the Governor was patron was made the conduit of the hot passions of the time. Wentworth and Wardell had, at a meeting of the club in 1827, assailed the Governor. Darling withdrew his patronage. Recriminations were exchanged, and Darling brought his power to bear on those public officials who were members of the club. Too late the club disclaimed the connection with politics which they had sanctioned. Dr. Wardell was prosecuted for a libel stating that the Governor's departure would be hailed with pleasure. By the jury law, unless both parties agreed to have a civil jury, the jurors were military officers. The officers were objected to as under Darling's control. The objection was over-ruled. The

jurors were fruitlessly challenged in "array." The imputations against them for servility were refuted by their conduct. They could not agree upon their verdict. Late on Saturday night they reported that they could not agree, and with consent of all parties they were allowed to depart until the Monday morning, pledging their honour that they would hold no conference about the trial out of doors. On the Monday, still unable to agree, they were discharged. Personal animosity so pervaded Darling's enemies that when a disordered man, armed with two pistols and a carving knife, assailed him as he was leaving church, there were to be found some who agreed that the Governor was to blame, and that his assailant was aggrieved.

When the Act 9 Geo. IV. cap. 83, arrived in the colony in 1829, Darling was relieved from the necessity of obtaining the Chief Justice's certificate that projected measures were not repugnant to English law. In January 1830 he amended the stringent Newspaper Act of 1827. Banishment was not to be for such term of years as a Court might order, but might be severe.

"If any person shall be legally convicted of printing or publishing any blasphemous or seditious libel, or any libel tending to bring into hatred or contempt the Government of the colony as by law established, or the Governor or Acting Governor for the time being, or to excite any of His Majesty's subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means, or to adopt any illegal proceedings, and shall after being so convicted offend a second time and be legally convicted, such person shall on such second conviction be adjudged to be banished from New South Wales for such term of years, not less than two, nor more than seven, as such Court shall order."

For publication after such second conviction there was a fine of £100 for each offence. One can understand the wrath of Wentworth and his colleagues at the enactment of such a measure, and their determination to wage war against Darling by impeachment in England. The Home Government thought it still too harsh, and on the 27th September, 1831, Darling carried a short measure repealing the portion of it which related to banishment. Public-houses; the administration of justice;

a census; dividing fences; pounds; the Orphan School lands; and the control of convicts, formed the basis of Darling's legislation. Brisbane's Act legalizing notes payable in Spanish dollars was abrogated by an Act (1826) "to promote the circulation of sterling money of Great Britain in New South Wales."

A celebrated Act, known as the Bushranging Act, dealt, in April 1830, with the crimes of "robbery and housebreaking, and the harbouring of robbers and housebreakers." It was introduced and was passed in one day, 21st April, 1830, when Donohue and his accomplices were at large. Chief Justice Forbes moved the necessary suspension of the Standing Orders. Suspected persons might be apprehended without a warrant, and detained pending proof, of which the onus was on themselves, that they were wrongly suspected. Any one carrying arms might be arrested. Any one suspected of carrying arms might be searched. General warrants to search any houses might be granted by any magistrate; constables might break and enter anywhere with such warrant by day or night, and on reasonable cause might seize fire-arms and arrest inmates. Persons found with fire-arms, and not accounting for them to the satisfaction of a magistrate, were guilty of misdemeanor, and liable to three years' imprisonment. All were bound to assist in carrying out the law; which might be pleaded in all suits against functionaries, and gave them treble costs if the appellant should fail. Robbers and housebreakers were to be executed on the day next but two after sentence. The audacity of the bushrangers seemed to justify inordinate powers on the part of the police, and the end was in a few months obtained. The criminal population for long years associated Darling's name with sternness and oppression. It could not be denied that severity was called for at his hands. Bushranging had assumed alarming proportions. At one time in the Bathurst district more than fifty desperados collected together, and a regular but indecisive engagement took place between them and the settlers at Campbell's river. The police afterwards suffered loss in an encounter with them.

A reinforcement of the mounted police under Lieutenant Lachlan Macalister hastened from Goulburn and found the bushrangers at the Lachlan river; Macalister was wounded, but the bushrangers were not subdued. A detachment of the 39th

Regiment (marched from Sydney at the first intimation of the gathering of the banditti) arrived and the gang surrendered. They were taken to Bathurst, where ten of them died on the scaffold. Outrages occurred in other districts. Persons were robbed and stripped close to the principal settlements. Donohue, long noted in tradition, established himself as a terror in the land not far from Sydney. Governor Darling's firmness rose with the occasion. Chief Justice Forbes yielded to the time and was obsequious.[1]

The Robbery and Housebreaking Act (21st April, 1830) gave unexampled powers to the authorities. Donohue and his companions after severe encounters died red-handed or on the scaffold. Two of them, Walmsley and Webber, stopped the venerable chaplain Marsden. While his daughter emptied his pockets to satisfy the thieves, the old man seriously warned them against their occupation. If they pursued it he should "next see them on the scaffold." His words were prophetic. In a few days he attended Webber at his death; Walmsley gave evidence and was pardoned. The soldier-corps of mounted police, though few in number, did yeomen's service throughout the country during this terrible time. Every settler kept himself in readiness to resist attack.

Norfolk Island had recently been re-occupied as a penal settlement, and a daring outbreak occurred amongst the prisoners in 1827. They had intended by a simultaneous dash to surprise

[1] John Macarthur to his son, 20th May, 1830: "The Chief Justice is very humble and cringing. . . . The effects of the Act have already been magical, and I think I shall be enabled to write you in about ten days that peace and security are once more enjoyed here. I am preparing two other important Bills to regulate free and ticket-of-leave men, which will put these men under so wholesome a state of restraint that we shall soon become an altered community." Donohue was shot by a soldier in 1830. Webber was hanged in January 1831. Dr. Wardell met his death at the hand of a bushranger in 1834. He found three men on his grounds; and, though unarmed, tried to drive them before him. They had not attained any notoriety at the time, but one of them was reckless and ferocious, and shot Wardell. One was a lad who turned King's evidence. At his trial the murderer terrified the spectators by vile language, struck his fellow-prisoner in the dock, and was with difficulty secured by six constables. Dr. Wardell, whose affairs had prospered, was about to visit England when his career was cut short. His funeral was largely attended.

the garrison, seize the arms, and possess the island. Fifty of them secured their guards and overseers as a first step. Four soldiers passing casually towards the hospital were chased, and only one escaped to warn the officers. The insurgents then fled to the small Phillip Island, seven miles distant, taking arms with them in three boats, and leaving only one disabled boat at the settlement.

On the following day the boat was repaired, and the commandant with a few soldiers pursued the runaways. After some firing, he killed three, captured eleven men, and returned to Norfolk Island with the boats in which the insurgents had fled. There were pigs and goats on the small island to support life, but by degrees, in subsequent visits, the commandant recaptured all the prisoners without any loss to the attacking force. A vessel carrying convicts to Norfolk Island in 1827 was seized by them; they compelled the master to navigate her. Intending to go to South America they touched at the Bay of Islands. Two whaling vessels were there. Their captains suspected the new-comers. The missionaries summoned the Maoris. The whalers fired upon the convicts, who surrendered, and were guarded by the Maoris until they could be sent back to Sydney.

The case in which Governor Darling's severity was most vehemently and persistently impugned, and which has afforded to some writers their only standard for judging him, was his conduct towards two soldiers, Sudds and Thompson, of the 57th Regiment. When Darling arrived in Sydney in the end of December 1825, he found a disposition amongst some of the soldiery to quit the service in order to become convicts. So captivating had the rewards of felony become under Macquarie's sway that soldiers were known to commit crimes in order by means of conviction to exchange the army for the criminal roll.

On the 2nd January, 1826, the new Governor issued an order to check the intimacy which had grown up between the convicts and the soldiers. Of the former were many thousands, of the latter 1500 in the colony. In April 1826 two men mutilated themselves for the purpose of obtaining their discharge. Each of them underwent the loss of an arm in consequence of the self-inflicted injuries. The Governor, instead of discharging

them, detached them as Pioneers at a distant penal settlement. Five men of the regiment had already committed robberies or maimed themselves, when in November 1826 Sudds and Thompson committed a robbery openly to procure their discharge. They were sentenced by the Quarter Sessions to transportation for seven years. The Governor commuted the sentence to labour on the roads in chains; and, to "render their removal from the corps as impressive as possible,"[1] caused it to be effected in the presence of the troops instead of in the gaol. Stripped of their uniform, clad in convict garb, with iron collars on their necks, and irons weighing about fourteen[2] pounds rivetted round their ankles, they were drummed out of the garrison and marched to the gaol. Sudds was alleged to have been unwell at the time; he was admitted to the gaol hospital; his irons were removed. The medical officer reported that the poor man refused all sustenance except a little tea, declared he would never work in irons, and wished himself out of the world. He became delirious on the 26th November, was sent to the general hospital, and died on the following day. The medical officer could find "no apparent disease" to account for the death.

Thompson underwent some portion of the sentence, and in September 1835 Dr. Bowring presented a petition from him to the House of Commons for redress. The Governor informed the Secretary of State that however much the death of Sudds was to be regretted it could not be imputed to severity; "none was practised or intended." But soon he was himself accused of brutality. When other causes of difference arose the sufferings of Sudds were virulently brought forward against the Governor.

Wentworth revelled in denunciation, and threatened impeachment. As Thompson, the surviving sufferer, was in good health, it would have been difficult to prove that the ordeal through which he passed was necessarily fatal, and the contemplated

[1] Governor Darling to Earl Bathurst, 4th December, 1826. The sentence did not relieve the men from further military service.

[2] It was asserted by some persons that the irons weighed 28lbs.; but the Colonial Secretary (Macleay) invited the editor of the 'Australian' to examine them in December 1826, and they were found to weigh 13lb. 12oz. respectively.

impeachment served no other purpose than to envenom the shafts of Darling's enemies. Wentworth nevertheless, in March 1829, when other quarrels had occurred, wrote a letter of impeachment to the Secretary of State. The Executive Council investigated Wentworth's charges in May 1829.[1] Archdeacon Scott, the Colonial Secretary, and Colonel Lindesay examined the superintendent of the agricultural (convict) establishment at Emu Plains; a ticket-of-leave holder who was overseer of an ironed gang; Dr. Mitchell, the much respected surgeon of the General Hospital in Sydney; a solicitor; the Governor of the Sydney Gaol; and Captain Robert Robison of the New South Wales Royal Veteran Company. The last-named, who was a friend of Wentworth, before signing his evidence, "submitted his dissent as to the propriety and competency of the present tribunal to enter upon the matter." Darling sent the proceedings of the Council with a report to the Secretary of State.

In England the cases of Sudds and Thompson were investigated on several occasions. Lord Goderich in 1827, and Sir George Murray in 1829, inquired into them. The former thought Darling blameless and persecuted; the latter that there was no ground for complaint against him. In 1830 the Attorney and Solicitor-General, Scarlett and Sugden (afterwards Lords Abinger and St. Leonards), examined the case exhaustively, and advised that there was no ground for the proceeding against General Darling.[2] Yet the case was brought before Parliament subsequently. One Robert Robison was in 1825 captain on half-pay in the 17th Light Dragoons. In that year he was appointed to the command of "out-pensioners," or "the New South Wales Royal Veteran Companies." In 1828 he was brought before a court-martial on eight charges, for insubordination, disobedience, and other matters, and found guilty on four, and in part guilty of three other, charges. He was sentenced to be dismissed.

The finding was confirmed in England in 1829 and promulgated in the colony in April 1830. As Robison's friend Wentworth knew Sir James Mackintosh, it was hoped that Mackintosh would take up the case in Parliament; but Sir

[1] Parliamentary Paper, 1835, vol. xxxix.

[2] Speech of Sir H. Hardinge in Parliament, August 20, 1835.

James Mackintosh having died, Dr. Lushington in 1833 presented a petition from Robison to the House of Commons, and moved for the production of the minutes of the court-martial. Mr. Robert Grant, Judge-Advocate-General, defended the Court, and Dr. Lushington's motion was rejected after a debate in which Sir H. Hardinge and Sir James Scarlett supported Mr. Grant, and Daniel O'Connell opposed him. Robison wrote a voluminous letter to Lord Althorp, "as the chief Minister of the Crown in the House," to contravene Mr. Grant's speech. Lord Althorp replied that he was sorry to be obliged to say that Robison had failed to answer Mr. Grant's speech.

Robison sent a memorial to Lord Hill, Commander-in-Chief. One peer and twenty-seven members of the House of Commons, including O'Connell, supported it. It was fruitless. Meantime Darling was proceeding against Robison for libel. Robison then determined to carry the war into his enemy's camp. O'Connell, in August 1834, presented a petition in which Robison accused Darling of various misdoings, and in particular of brutality to Sudds and Thompson. He reported the weight of the irons put upon them as in his opinion thirty pounds. He was probably ignorant that they had been weighed in Sydney. He partly attributed Darling's animosity against him to the indignation expressed by Robison at the cruelty towards the two soldiers. Mr. O'Connell promised to take the matter up in the following session; unless some other member would do so. Meanwhile Robison, on the 11th December, 1834, was found guilty of libel, and judgment was delayed (by reason of affidavits put in by Robison) until the 15th June, 1835, when Lord Denman, and Justices Littledale, Patteson, and Williams sentenced him to four months' imprisonment in the Marshalsea. "On the whole of this matter" (the Court said with reference to Sudds and Thompson), "we can see no reason for censuring the conduct of General Darling."

Not daunted by such a judgment, Mr. Maurice O'Connell on the 30th July moved for a Select Committee to inquire into the conduct of General Darling while Governor of New South Wales as regarded Sudds and Thompson and other matters. His speech was violent and exaggerated. Mr. Joseph Hume supported him. Sir George Grey contended that the legality

of the sentence on Sudds and Thompson was not a matter which the House could deal with. Mr. Cutlar Fergusson, the new Judge-Advocate-General, objected (like his predecessor) to interference with the finding of the court-martial on Robison. O'Connell stormily denounced the tortures inflicted on Sudds, and aided by the votes of those whom on another occasion he called "base, bloody, and brutal Whigs," Mr. O'Connell's reasoning prevailed. By 55 votes against 47 the motion was carried. The Committee contained the names of Mr. W. E. Gladstone, Daniel O'Connell, Sir John Hobhouse, Dr. Bowring, Dr. Lushington, Henry Lytton Bulwer, Sir Henry Hardinge, Joseph Hume, and others of note. Lord John Russell succeeded in carrying an instruction to the Committee which withdrew from their purview the court-martial on Robison, although Maurice O'Connell fought hard for the privilege of examining Darling's conduct with regard to that Court. There was hot strife in the Committee. Sir Henry Hardinge protested against converting it into a Criminal Court where General Darling was charged with murder or manslaughter and where witnesses could not be examined on oath. It was "the worst and most democratic Star-Chamber that ever existed." Maurice O'Connell had caused heavy irons to be made as a pattern of those used in Sydney. Sir H. Hardinge described him as "the member who conducted the prosecution," and indignantly told the House that he would not continue to attend the Committee unless he could be assured by the Speaker that there was any precedent for a Select Committee trying a man for murder. On the 1st September Mr. Tooke brought up the report of the Committee. It stated that

"The conduct of General Darling with respect to the punishment inflicted on Sudds and Thompson was, under the peculiar circumstances of the colony, especially at that period, and of repeated instances on the part of the soldiery of misconduct similar to that for which the individuals were punished, entirely free from blame, and that there appears to have been nothing in General Darling's subsequent conduct in relation to the case of the two soldiers, or in the reports thereof which he forwarded to the Government at home, inconsistent with his duty as a public functionary, or with his honour as an officer and a gentleman."

Dr. Bowring and other members of the Committee were displeased with the report.[1] On the 10th September he presented a petition from the soldier Thompson, averring that he had reached London too late to appear before the Committee, and praying for an opportunity to make known the injury he had sustained from confinement "in irons of a cruel and unprecedented form and weight." Dr. Bowring warmly arraigned the report of the Committee; but Lord Dudley Stuart, who had voted for the inquiry, confessed that as the evidence proved that Darling was not aware of the illness of Sudds, and as the irons used were neither cruelly heavy nor calculated to inflict torture—he did not think Thompson's evidence could rebut that which had been received.

Mr. Freshfield, a member of the Committee (33 in number), stated that there were only three dissentient voices on the acquittal of General Darling. Thompson's petition was ordered to lie on the table. General Darling was received at Court, was knighted, and honoured with the Grand Cross of the Order of Hanover. Robison printed the various debates on his case with explanatory notes. Darling circulated the judgment of the King's Bench under which Robison was imprisoned, and in which Darling's conduct with regard to Sudds and Thompson was pronounced undeserving of censure.

Governor Darling proved at a very early period that he was no respecter of persons.

In 1827, in a Public Order referring to "an individual" whose convict servants had been withdrawn by an order of one of the bench of magistrates, the Governor announced, to prevent misunderstanding on a point of so much importance to the inhabitants and the prisoners of the Crown, that the Home Secretary had signified that the local government was not precluded from making any necessary regulation "respecting the re-assignment of the service of convicts," and that the Governor, "empowered to assign that service, is fully competent to modify" it "as justice and good policy may require."

If convicts should be insufficiently fed or clothed, improperly treated, or suffered to work abroad, or go at large, their masters

[1] Saxe-Bannister placed charges against General Darling in the hands of Mr. Maurice O'Connell during the sitting of the Committee.

were liable to lose them. The Governor's enemies represented that this announcement was tyrannical because it recognized his power to recall prisoners who had been assigned or transferred to their wives or friends, and who might desire to remain in such nominal bondage.

Previous to the introduction of the Bill for restraining the press there was an ominous questioning of Judge Stephen which deserves to be recorded. He had, in discharging prisoners brought before him under the Habeas Corpus Act, declared that he deemed their rights as "sacred in the eye of the law as those of freemen;" and Governor Darling inquired whether the report of his remarks was correct. Stephen disclaimed accountability to the Governor for his judicial exercise of his functions, and requested that the letter of inquiry, with the reply to it, might be forwarded to the Secretary of State.

The 'Australian' newspaper was not slow to comment on the wretched state of "vassalage" to which it was sought to reduce a British Judge and the Courts of Judicature.

In 1828 Darling, like Colonel Arthur in Van Diemen's Land, appointed a Board to assist him in determining on applications for grants of land, which became oppressively numerous as immigration and population increased. The earliest grants had been coupled with conditions of residence, cultivation, reservation of timber for naval purposes, and quit-rents of sixpence per thirty acres (the usual grant) in cases of emancipists, and two shillings per hundred acres from free settlers, after ten years.

Macquarie but slightly varied these conditions. Brisbane withdrew the cultivation clause, and made settlers maintain a convict servant for each hundred acres granted to them; and in 1823 he made his grants liable to a quit-rent of fifteen shillings for each hundred acres.

In 1824 the Colonial Office issued new regulations. Immigrants might receive four square miles (or 2560 acres) as a grant. They might furthermore buy land.

In 1826 further regulations offered a return of the purchase-money of land to those who received assigned servants, the maintenance of each convict being valued at sixteen pounds sterling a year, and soon afterwards special regulations invited military and naval officers to settle on terms which gave free

grants for twenty years' service, and kindred advantages to junior officers. Grants of land were also given to native-born young women on the occasion of their marriage. The discovery that the Governors' grants of land were informal, because issued not in the King's but in their own names, created anxiety in New South Wales as well as in Van Diemen's Land, and in both cases much time elapsed before doubts were set at rest.

The offers of 1826, coupled with the impulse given to free immigration by the reception accorded to Bigge's report and the condemnation of Macquarie's ideas, attracted immigration. Public attention was stirred by Sturt's successful river expedition. Swan River rapidly absorbed some four thousand people. But the grantees could not command labour. Owners of hundreds of thousands of acres were deserted by armies of hired servants. Inextricable confusion followed. Starving labourers clamoured for bread, after abandoning their contracts. The proprietor of a territory could neither draw income from nor cultivate it. Little Van Diemen's Land sent food and clothing, and carried away labourers. Swan River pined, and her population dwindled to fifteen hundred.

A territory thus occupied was but a feast of Tantalus. The disappointment of the guests was only not perpetual because colonists were not like Tantalus—immortal. They could die, therefore, if they did not depart. The Colonial Office was at its wit's end. But the new prophet, Gibbon Wakefield, was ready with his racy periods and sagacious insight. Lord Goderich could not comprehend the heart of the matter, but he could play with its outside. *Hærebat in cortice.* He issued new regulations abolishing free grants, and fixing an upset price of five shillings an acre. All lands were to be sold by auction.[1] There was a reservation of the precious metals and of some minor rights, by the Crown. Although these regulations reached the colonies before Darling's retirement, the consideration of their working must be deferred. Before his departure

[1] It is perhaps worth mentioning that, in 1826, Lord Bathurst directed Governor Darling to grant ten thousand acres of land to the late Governor (Brisbane) "in addition to a primary grant of the same amount." The original grant was not selected by agents until 1833, and was soon sold. Governor Gipps in 1838 objected to the issue of the additional grant.

he felt it necessary to discontinue the penal establishment at Port Macquarie, and allow settlers to proceed thither.

Amongst the principal events during his rule may be reckoned the construction, by Mr. Busby, of a tunnel to convey water from the Botany Bay Swamps, and supersede the use of the reservoirs called Tanks used in earlier days to hoard the water which crept to the Bay near Pitt Street. The mountain road from the Hawkesbury (at Wiseman's Ferry) to the Hunter was completed, but its special usefulness was in part neutralized by the introduction and building of steam-vessels a short time afterwards.

A season of depression followed the excitement of the immigration and free settlement commenced under Brisbane, and the occurrence of a severe drought in 1828-9 brought about a financial crisis. Prices fell. Live stock purchased three or four years before were sacrificed at less than a tithe of their original cost. Free immigration was arrested, and from 1828 to 1830 not more than 2000 souls, including children, arrived.

A scarcity of grain called on the Government to reduce the rations prescribed for assigned servants, and made the name of Darling still more odious to convicts. Rain came to drop fatness into the earth, and the crops of 1830 demanded more reapers than the Government could afford to aid the settlers. A revival of immigration, and good (or rainy) seasons restored all languishing interests.

The condition of the legal profession was seriously considered by the Judges in 1829. It was formally divided by a rule made by the Supreme Court, subject to the pleasure of the Crown. All practitioners at the time were allowed by the rule to elect whichever branch of the profession they might prefer to follow in the future. Admission to the Bar was to be given only to those duly admitted in the Courts in the United Kingdom; and attorneys were in future only to be enrolled on proof of admission at home, or of having served five years in an attorney's office in Sydney, or in the Supreme Court.

Barristers had petitioned for the change, while attorneys had opposed it. The Judges had not the vigour to carry out their own order, until their ranks were strengthened by the arrival of

Judge Burton. With his moral support the rule was enforced in 1834.[1]

A case which was tried in 1827 was seriously considered in every household in the colony; and perhaps deserves to be chronicled. Frederick Fisher, an emancipist, lived at Campbell Town in the same house with George Worrell. In July 1826, Fisher's sudden disappearance was made known. No inquiry was instituted, and it was suggested that as the man had only a conditional pardon, not available in England, he had gone there clandestinely, as other men were known to have gone. About ten days after he had disappeared, Worrell assumed possession of all Fisher's property, and in various ways hinted that Fisher had left the colony. He sold Fisher's horses, and received money due to Fisher from neighbours. One of the witnesses, Samuel Hopkins, swore that no inquiry at all was "set on foot about Fisher's disappearance."

A terrified man, named Farley, startled the neighbourhood by declaring, in October 1826, that he had seen Fisher's ghost on a fence at the corner of a paddock that had belonged to Fisher, and about fifty yards from Worrell's house. His story was told to a magistrate. A constable was sent for. Two native blacks assisted in the search. Blood was on the rail where Farley saw, or thought he saw, the ghost. In the direction in which the vision had pointed, the black, Gilbert (according to the constable's evidence), went into a water-hole (or pool), "and took a cornstalk, which he passed over the surface of the water, and put it to his nose, and said he 'smelt the fat of a white man.'" The blacks led the constable up the creek till they came to another creek, "and went up that for about forty rods, when a black man put a rod into the ground and said, 'there's something here.'" There a body was found, and was identified as Fisher's. Worrell was apprehended, and at first endeavoured to throw the crime upon four men living on his farm. At the trial no evidence was admitted as to the vision seen by Farley; but it is impossible for men, even when charged by a Judge, to exclude

[1] Mr. Justice Therry in his 'Reminiscences' (London: 1863) confessed that Burton's decision of character was needed to enforce the rule. He adds that the change was advantageous to the profession and to the public, and that "from that time the profession greatly improved in general estimation" (p. 341).

from their minds what seems to them portentous. The seizure of Fisher's property, however, by Worrell; the finding on land in his occupancy of the dead body of the man who, according to Worrell's statements, had gone away; the conflicting tales he told after the body was found; were, perhaps, circumstantial enough. Worrell was found guilty, confessed his crime, and was hanged on the 5th February, 1827, three days after conviction. The story has been often told erroneously, and has been woven into fiction. These facts are compiled from the notes of Chief Justice Forbes, who presided at the trial; with the exception of the references to the apparition, which, although it led to the search for Fisher's body, could not be alluded to in a Court of Justice, nor be adduced as evidence.[1] Nothing was ever elicited to account for the vision which Farley described, or to suggest that he previously suspected foul play on the part of Worrell or others.

Schools of a higher order than the colony had previously seen were set on foot. In 1830 Mr. Lang, the Scotch minister, went to England, and stirred up some of his countrymen to emigrate to the new land of Goshen. He worked out a scheme for establishing a college under his own guidance. A Sydney college had been founded locally by a company with a capital of £10,000, and the foundation-stone was laid with due ceremony by the Chief Justice on the 26th January, 1830. Lang was connected with the project, but he longed to found an academy under his own control. The difficulty was in procuring funds. Already he had quarrelled with some of his early patrons. He speculated on these powers of negotiation in England, which he had employed for his own advantage in 1825. He was courteously received, and Lord Goderich accorded to him an extension of leave of absence which he asked for. Concealing the fact that a college had been founded, and urging the destitution of the colony in moving terms, he persuaded Lord Goderich to direct the payment from the Colonial Treasury of £3500 to himself and his coadjutors for the establishment of an "Australian

[1] The Campbell Town ghost-story, like all others, was garbled in narration. I have corrected current rumours by comparison with the words of a trustworthy informant, a medical man, who lived long in the neighbourhood, and attended Farley on his deathbed. He often conversed with Farley on the subject of the vision which scared him.

College." To further his plans Lord Goderich advanced him in England £1500 to pay for the passages of Scotch workmen to erect the buildings. They were selected by Lang himself, who returned triumphant.

He was well aware that his devices would give umbrage to those with whom he had professed to co-operate in founding the Sydney College. He therefore kept them from the public gaze as much as possible. He who had been indignant with Mr. Wemyss for not resorting to publicity about the Scots church in the first instance, discovered that it was undesirable with regard to a college. He wrote to John Macarthur (14th November, 1831): "May I request your patronage and assistance in carrying into effect the plans I have put into operation? ... Most people would have called a public meeting to have had the principles publicly recognized, but I have so often seen public meetings in Sydney wander into the discussion of subjects altogether irrelevant ... that I think it high time to attempt the doing of something without a meeting at all." He wished for a council of seven gentlemen. "May I request that you will do me the honour to form one of that number, should you deem it expedient to lend the institution your patronage?" Macarthur took no part in the matter, and from that date the pen which had previously praised[1] him was employed in a different manner.

For sake of succinctness it may be mentioned that in 1832 the promoters of the Sydney College, of whom Lang had been one, censured him for intriguing against its interests, and founding one entirely under his own control. They cited against him their own prospectus written by himself to the effect that the success "of the institution was no longer problematical." Lang made a confession by avoidance. Having persuaded Lord Goderich, that to procure the college he must have the immigrants, he hoped to convince the shareholders that to procure the immigrants he was obliged to put forward the scheme of the college. However insidious his conduct towards his coadjutors may have been, many of the immigrants he introduced were excellent colonists.

[1] In 1827 Lang wrote: "As I have already experienced the benefit of your friendly advice and valuable influence oftener than once, I beg you will permit me to draw upon you in a similar way once more." The subject was the preparation of a memorial for the Secretary of State.

At the close of General Darling's government, about forty years had elapsed since the foundation of the colony; and the first immigrants began rapidly to disappear as their children passed into middle age. The links which bound the memory of all to the pilgrim fathers were broken in every grade of society.

D'Arcy Wentworth in 1827 ended his bustling career at the age of 65 years, leaving a son whose name was in the mouths of all as that of the ablest man upon Australian soil. Oxley the explorer, the friend of Flinders, passed away. Another of his friends, Bungaree, a native, whom Flinders was allowed to take as a companion in exploration, and whom he extolled as "brave and worthy," was gathered to his fathers. Throsby, the early civil commandant at Newcastle, died by his own hand in temporary derangement. He had become security for Garnham Blaxcell, whose joint monopoly of spirit selling with D'Arcy Wentworth and Riley neither made his fortune nor abated his speculative enterprise, and who absconded as a defaulter during the government of Macquarie.

Mr. Balcombe[1] the Colonial Treasurer died in 1829, and was succeeded by Mr. C. D. Riddell. Captain Piper,[2] whose accounts were in disorder, was superseded in his position as "Naval Officer," and his duties were undertaken by Mr. J. T. Campbell, under the style of Collector of Customs. Mr. Mackaness the Sheriff, whose presiding at a public meeting in 1827, of an imputed inflammatory character, was condemned, was removed from office, and Mr. Macquoid, a Java merchant, took his place. The extension of commerce and of pastoral pursuits, which had dated from the adoption of Mr. Bigge's recommendations, and was aided by geographical discoveries, necessitated an increase of civil establishments; and many new officials appeared upon the scene. A Registrar of the Supreme Court was appointed in the person of Mr. Manning. Mr. Roger Therry became Commissioner of the Court of Requests. Mr. Raymond became the postmaster. Mr. Laidley, destined to be the ancestor of families highly esteemed, arrived as Commissary-General.

[1] Mr. Balcombe had served at St. Helena while the great Napoleon was a prisoner there, and one of his family published Reminiscences of the captive.

[2] In 1836 Captain Piper was applied to by James Mudie, author of 'The Felonry of New South Wales,' for a certificate of character, and gave one.

A new order of things had sprung up; but still some of the old names of the colony were in high repute; and sons of honourable character were rising to bear the banner of their fathers. A singular refraction of distant fame glints through the ordinary social record of Sydney, when one sees that there was public mourning for the death of the celebrated Bishop Reginald Heber in whose diocese Australia was included.

When Governor Darling left the colony the population of New South Wales was estimated to be 51,155. The ordinary revenue was about £100,000. The wool export was nearly a million and a half pounds. Oil was exported to nearly the amount of £100,000, while the total imports were nearly £500,000. When the Governor was about to depart, having held office about six years, there was an unexpected display of feeling. Chief Justice Forbes, in the name of the Legislative Council, presented a farewell address, signed by himself and the other members. They dwelt on the good feeling between the Governor and the Council; they assumed their full share of responsibility for the measures enacted; they pointed out with pride the advancement towards trial by jury, and the gradual substitution of Legislative enactments for Executive proclamations. Of the Bushranging Act they said, "The expediency of the act of vigour has in the event been proved by the restoration of general tranquillity." Internal security, the development of internal resources, increasing commerce, showed that the groundwork of prosperity was already laid. Collectively and individually they expressed their "unabated esteem" for his Excellency.

Darling replied in cordial terms to this and other addresses, from the Executive Council, the civil officers, and the clergy, magistrates, landholders, and merchants. But though Chief Justice Forbes might relent—might become spokesman of good will—though all voices concurred in tribute of grateful praise to the Governor's wife; William Wentworth, the perfervid Australian patriot, surrounded by wild spirits, and urged on by the sympathies of the emancipist party, which contained so many elements of evil omen, scorned the weakness of reconciliation or forgiveness. He invited a large party to rejoice at the departure of their foe. An ox was roasted whole at his grounds at Vancluse. The worser spirits of those assembled there wound up their

orgies by carrying the bullock's head in token of triumph, in noisy procession in Sydney, parading it through the streets, and exhibiting it under the cabin-windows of the ship in which the Governor's family were about to sail. An illumination of the town was proposed, but rejected by the good sense of the community. An opposition newspaper was conspicuous in exhibiting its solitary flames. The coarse display at Darling's departure was long a charge against Wentworth's judgment and taste. Colonel Lindesay, of the 30th Regiment, assumed the reins of government until the arrival of General Bourke, who had been appointed Governor.

CHAPTER X.

GOVERNOR BOURKE.

THE vigorous remonstrances of Wentworth, the sympathy of Sir James Mackintosh, and the growth of the colony, combined to impress upon the Secretary of State the necessity of assimilating more and more the framework of colonial society to that of the mother country. Sir Richard Bourke, the man chosen for the task, had many qualifications. He was patient, politic, and well-disposed. If he wanted the ardour of conviction which would make him cast away the scabbard in a right but losing cause, he could conceal his chagrin on occasion, and calmly work, and induce others to work, for a distant object of which they did not, like him, foresee the result. Yet he could not perhaps be charged with duplicity. He was wily. He was received with enthusiasm on the 3rd December, 1831. The rising sun was worshipped in all approved, and in some uncustomary, ways. A public meeting of the inhabitants adopted an address contrasting strangely with the one presented by Forbes to the retiring Darling. The past six years had been a season of "public endurance from an inveterate system of Government;" "a reign of terror and discord." They warned Bourke pointedly against (Mr. Macleay) "the chief executive officer of the late Government."

For the language of the framers of an address no large meeting can be held responsible. Many men agree to, or do not protest against, that which if calmly appealed to they would condemn. But the framers of such an address had no excuse. Wentworth, ardent as he was, would not identify himself with them. He declined to speak although hotly called for. An emancipist was the seconder of the address. Bourke was too wary to praise or to blame. He was pleased to be assured that the colonists were

firmly loyal,—institutions similar to those of the mother country would be introduced as might seem expedient,—and the local government would strive to restore concord amongst them, to which end they themselves should also labour.

The story of discovery and occupation during the decade commencing in 1831, embraces a wide field. The Surveyor-General, Major (afterwards Sir Thomas) Mitchell, took command in 1831 of an expedition fitted out (before the arrival of Governor Bourke) to test the truth of a tale told by a runaway convict. He declared that at the back (or north) of Liverpool Plains he had followed a river which running through many lakes reached the north coast. No confirmation of the convict's story could be found, for it was untrue, but Mitchell gained additional knowledge of the courses of the Nammoy, the Gwydir, and the Darling rivers. A minor expedition in 1833 explored the country between the Bogan and the Macquarie, and in 1835 Mitchell started again in the same direction. One great object was a survey of the Darling river. On the Bogan (the New Year's Creek of Sturt and Hume) Mr. Cunningham, the botanist of the expedition, lost his way and his life. Thirst and fatigue destroyed his horse; and when found by some natives he was himself delirious from the same causes. Mitchell came to the conclusion that they had treated him kindly until, terrified at his delirium, they destroyed him. He was a brother of Allan Cunningham, the botanist and explorer of former days. Mitchell's party followed the Bogan to its junction with the Darling, and traced the latter river nearly to its junction with the Murray. On this occasion he named Fort Bourke after the Governor. Shots fired at the natives provoked them, and Mitchell, alarmed at the probable consequences of an affray in which several natives were shot, returned. A serious inquiry was held by Bourke as to the affray; but Mitchell was nevertheless despatched again in 1836 to survey the Darling more effectually. It was known that Batman had in 1835 occupied Port Phillip, and Mitchell was anxious to examine the country westward of Batman's settlement. In 1834, Mr. Edward Henty had established a whaling station and settled at Portland Bay. South Australia was about to be colonized at once. The space between these settlements and Port Phillip was a tempting field. Mitchell

followed the course of the Lachlan. Making a vain effort to cross the waterless tract which separated him from the Darling, he reached the Murrumbidgee, the Murray, and the junction of the latter with the Darling, but not without taking the lives of many natives. Returning up the Murray he quitted it at Mount Hope, ascended the Loddon nearly to its source, and diverged westward by Mount Arapiles, naming on his way Mount William after the reigning King, William IV. He burst into enthusiasm as to the beauty of "this Eden" he was "first to explore," and by his "survey to develope;" but was candid enough to note that two natives visited the camp who had been at cattle-stations, and demonstrated that white men at Portland Bay, and white men at Port Phillip, had practically preceded him.

Observing a river which he called the Glenelg, after the Secretary of State, he returned southward, and reached the coast near Cape Northumberland. He was disappointed at the absence of surprise on the part of one of the natives who was in his camp and had never looked on the sea. "On the contrary, the placid and comprehensive gaze he cast over it seemed fully to embrace the grand expanse. I was much more astonished when he soon after came to tell me of the fresh tracks of cattle, and the shoemarks of a white man." He was near Mr. Henty's establishment. There he was hospitably entertained. In his homeward course he passed and named Expedition Pass, and Mount Macedon. In publishing his work, Mitchell admitted that the native name of the latter, "Gheboor," was better. The country near the Loddon which he so much admired he called Australia Felix, but the name was never commonly in use. As he intersected the track of Hume in 1824, he found reason to admire the accuracy of that gentleman's observations, and wrote to congratulate him. Mitchell's published account[1] of his travels contained valuable botanical and geological information, and, as his style was agreeable, his work increased the zest for emigration to the tempting scenes he pictured. His pages were enriched by a letter from Professor Owen scientifically describing some fossil remains.

Through the whole of the country traversed by Mitchell, he was able to take carts to convey his stores, and settlers were not

[1] 'Mitchell's Expeditions.' London: T. and W. Boone. 1839.

likely to find difficulty in covering it with stock. Port Phillip and South Australia were scarcely colonized when "overlanders," as they were called (*i. e.* settlers driving stock either for sale or to be retained on runs taken up by their owners), took flight from various parts of New South Wales for the "new country."

The occupation of previously-discovered tracts (Port Phillip and South Australia) need not be inserted amongst explorations, though occurring in 1835 and 1836. The colonists in the latter, early but vainly sought to find some other outlet for the Murray than the one reported by Sturt. A settler, Mr. Bonney (afterwards Commissioner of Crown Lands in Adelaide), first passed overland from Portland Bay in the Port Phillip district, to Adelaide in 1839. The first settler who crossed the Murray river from New South Wales on his way to Port Phillip with flocks of sheep was Mr. C. H. Ebden, who in after years was the able Treasurer of Victoria.

Mr. Edward John Eyre (afterwards known as Governor of Jamaica) also passed with stock from Mount Alexander to Adelaide. Baffled in an attempt to reach the Murray from Lake Hindmarsh, he resorted to the track already followed through the more practicable country nearer the coast.

In 1837 a singular expedition was despatched under Lieutenant (afterwards Sir George) Grey, of the 83rd Regiment. Conveyed to the Cape of Good Hope in a man-of-war, the 'Beagle' (under Captain Wickham),—the party (twelve in all) hired a small vessel to take them to Hanover Bay, in lat. S. 15, and thence they were to journey by land to Swan River in lat. S. 32. The intermediate country was sterile and stony. In December the stores were landed, and the schooner 'Lynher' was despatched to Timor for ponies. Short excursions produced little result except hostility with the natives, and when in a month's time the Timor ponies arrived they were unmanageable, and some sickened and died. Intelligent as he was, Grey discovered little. The steep sandstone range refused a passage. Grey was wounded by a native, and though he recovered sufficiently to find a river which he called the Glenelg, whose size deceived his expectation that it would open for him a way to the interior, he was forced to return. The river dwindled as he approached the coast range. The range was impassable. It yielded, however, some

marvels. Painted figures on the walls of caves revealed a time when the aboriginal race had retained some relics of the arts their ancestors had elsewhere learned. Grey returned to Hanover Bay, where he found Captain Wickham with the 'Beagle.' His old friend had already discovered the Glenelg river, and the unexpected meeting was welcome to both the explorers who so strangely met on that sterile coast. Letting loose his ponies Grey sailed in the 'Lynher' to the Mauritius. Thence he voyaged to Swan River, hoping for assistance from Sir James Stirling in prosecuting his explorations in the north-west. After short excursions from Perth he was conveyed by an American whaling vessel to Bernier Island at Shark's Bay. He had three whale boats. His whole party consisted of twelve persons, one of whom was Kaiber, a Swan River native. On the 25th February, 1839, he was landed on Bernier Island. The storms encountered and the hardships undergone may be read in his published narrative.[1] It is sufficient to state here that after discovering the Gascoigne river he returned to Bernier Island to find that his provisions buried there had been ransacked and destroyed by the natives. Worn out by toil, his men were savage and desponding; but they yielded to his influence and agreed to obey his orders. After a few hours, during which he says—"in order more fully to compose my mind I sat down and read a few chapters in the Bible"—he determined to make his way back if possible in the crazy boats to Swan River.

He recorded his conviction that the stay of religious consolation tended much to the ultimate preservation of his men. At Gantheaume Bay their marine risks ended, for their boats dashed by the surf became irreparable. Weary and wan, they addressed themselves to the task of a land journey of three hundred miles to Swan River. They had twenty pounds of bad flour and one pound of salt provisions for each man. A strange trait of character appeared. Weak as they were, some of the men loaded themselves with canvas and other waifs from the boats, hoping to sell them at Perth; nor could Grey's earnest entreaties dissuade them. For a few shillings they risked their lives. When only forced marches could save them several

[1] 'Captain Grey's Travels in North-West and Western Australia.' London: T. and Boone. 1841.

pleaded that only slow journeys would enable them to keep their strength; and after some time Grey proceeded (10th April) with five (including Kaiber); leaving six others to follow by the gentle stages they loved. On the 13th April Grey divided with Kaiber his last morsel of flour.

"It was almost a satisfaction to me when it was gone, for, tormented by the pangs of hunger, as I had now been for many days, I found that nearly the whole of my time was passed in struggling with myself as to whether I should eat at once all the provisions I had left, or refrain till a future hour. Having completed this last morsel, I occupied myself for a little with my journal, then read a few chapters in the New Testament, and having fulfilled these duties I felt myself as contented and cheerful as I had ever been in the most fortunate moments of my life."

Kaiber found a prize:—nuts of the Zamia tree stored by the natives in four holes. Grey says he doubted whether to sanction the robbery of the unoffending owners, and yet starvation was on him and his men. He asked Kaiber's advice.

"If we take all, this people will be angered greatly; they will say, 'What thief has stolen here?—track his footsteps, spear him through the heart; wherefore has he stolen our hidden food?' But if we take what is buried in one hole, they will say, 'Hungry people have been here; they were very empty, and now their bellies are full; they may be sorcerers, now they will not eat us as we sleep.'"

The advice was taken; one hole was robbed, and its contents were divided with the rest of the party, ignorant of the source they came from. Thirst came, but Kaiber found a muddy puddle which saved them, and they staggered onwards till they fell in with some natives as they approached Perth. Unrecognized scarecrows, they were shrunk from by those whom they knew. Immediately an expedition was sent to meet the laggards, whose plan was to march by slow stages, to the Moore river about sixty miles northward of Perth. One was found near the river, and brought to Perth on the 6th May. Another relief party discovered three more worn almost to dying. One, Mr. Walker, pushed on and reached Perth by himself on the 9th May. One was found dead after long search. Mr. Roe, the Surveyor-General at Western Australia, who led the rescuing party,

thought that even a few hours' delay would have prevented the finding of any of them alive. By the labours of this hazardous expedition the Gascoigne, the Murchison, and other rivers to the north of Swan River were discovered. Maritime discovery meantime was followed up by Captain Wickham of the 'Beagle.' The Fitzroy and Victoria rivers were found on the north-west coast. The latter was traced for one hundred and forty miles from the sea. The Flinders and Albert rivers were found, and named, in the Gulf of Carpentaria. The 'Beagle' was known in every Australian household. From 1826 to 1843 under various commands she roamed the Southern Seas. When she was commanded by Captain Stokes in 1835 she carried with her Mr. Charles Darwin, a careful collator, and lucid writer, who seems to have thought that he discovered in "natural selection" a principle unnoticed before; forgetful of the words,—*sæpe superbos cornibus inter se subigit decernere amantes*,—and those which tell that in all creatures upon earth, including man, Virgil observed the same principle. Under another Stokes, who had served in her as a midshipman, the little brig concluded her labours, and he recorded her discoveries. The dangers of the Barrier Reef were more carefully examined and made known. Torres Straits had an unenviable reputation. Coral dangers were supposed to rise capriciously; and shipwrecked vessels might rot before another wanderer might pass. Captain Hobson of H.M.S. 'Rattlesnake,' devised a method to enable sailors to know of one another's movements. At Booby Island he placed a large box in 1835, and passers-by inscribed in a book the particulars of their voyage. The place was called a post-office, and letters were left there for other voyagers to carry away.

There was still a desire to form a permanent settlement on the north coast. At Sydney, in July 1838, Captain Stokes[1] met H.M.S. 'Alligator' and 'Britomart,' under Sir Gordon Bremer and Captain Owen Stanley, bound for Port Essington. In October Sir G. Bremer, having taken formal possession of Cape York on his way, selected a site at Port Essington and called it Victoria. In 1839 Stokes visited the place, and foresaw its decay. The climate was unsuitable for European constitu-

[1] 'Discoveries in Australia, 1837—1843.' J. Lort Stokes, R.N. London: 1846. Those who have opportunity to read it will find it a charming work.

tions. The sickliness brought on by the torrid situation received added horror in the almost total isolation from friends. There were doubts about the quality of the soil. There was no doubt about one thing. The French were supposed to look with longing eyes upon the coast. Soon after Sir Gordon Bremer fixed upon his site two French ships, 'Astrolabe' and 'Zelie,' arrived at Raffles Bay. "The officers of the two nations seemed to vie in courtesy," Stokes informs us; but "the question whether foreign powers were entitled to take possession of points on the coast of Australia was much debated at the time, and it was popularly believed that they had entertained some intentions of forestalling our settlement." Captain Owen Stanley in the 'Britomart' was called upon to act in the matter a few months afterwards at New Zealand; but his exploit there belongs to the history of that country.

Various additions were at this time made to the knowledge of the east coast. They were inevitable; for when Moreton Bay was occupied, the intervening space between Sydney and Brisbane was sure to become gradually known. Sawyers in search of cedar took up their abodes on the Clarence river in 1838, and from that wide stream vessels carried valuable cargoes of timber past the dangers and shallows of the unlighted bar-harbour. In subsequent years the Bellengen, the Tweed, and the Richmond rivers were similarly occupied. Meantime, in South Australia a committee was formed to promote the discovery of an overland route to Western Australia. Mr. Eyre (already mentioned) suggested exploration to the north of Adelaide, and was put in command of an expedition. He had previously distinguished himself by excursions to Lake Torrens, and from Streaky Bay to Mount Arden. Mount Eyre had been named after him. In June 1840, he started amid the jubilations of the South Australian world. He took with him a silk Union-Jack to plant in the centre of the continent. To Lake Torrens, to Mount Serle, amidst sandy wastes and marshes which were salt, he forced his way. On Mount Hopeless he looked out upon the same forbidding appearances. He fitly named the Mount, and turned back, reaching Mount Arden in September. One detachment of his party he sent to Streaky Bay, and with another he went to Port Lincoln. Obtaining supplies from

Adelaide by water he rejoined his companions at Streaky Bay, and his last stores carried by sea were landed at Fowler's Bay. He sent back several of his party, retaining only his overseer John Baxter, and three native boys, one of them, Wylie, taken from Western Australia to Adelaide by Eyre himself. Vain efforts to advance detained him until the cutter returned from Adelaide with despatches imploring him to return. The community was satisfied: assistance would still be given to him in exploring, but to go westward as he was situated would be madness. Eyre refused to return. John Baxter adhered to him. The native boys perhaps were not consulted. The cutter left them. On that dreary coast, pushing forward by forced marches, sometimes returning to a previous camp for a few pints of water, sometimes wringing a scanty supply from the dew on shrubs,[1] sometimes scraping holes in the sand, they crept forward, man and beast daily pining under thirst and fatigue. Once when for five days under that glaring sun, not seen dimly and occasionally as in England, but blazing fiercely the live-long day, Baxter proposed to endeavour to return to their buried provisions at Fowler's Bay. To go back was fearful, but they knew the ground. To advance was to plunge into the unknown. Eyre persevered. On the seventh day, after toiling for a hundred and sixty miles without water, they obtained it in a hollow, by scraping to a depth of six feet. They rested several days. Again they pushed forward. When midway (April 7th) between King George's Sound and Fowler's Bay, Baxter again advised a retreat. The nights had become bitterly cold; man and beast could scarcely crawl. Eyre considered that the country to the west might be better, and could not be worse, than they had traversed in the east. They advanced. A wretched horse was killed for food. On the 22nd April some of it seemed to have been stolen by the black boys. Eyre deducted the lost quantity from their rations, and asked them to say who was the culprit. Wylie and another denied the theft. The third refused to answer, and said that he and Wylie (the King George's Sound native) would make their way by themselves. Eyre reasoned in vain. The two stalked forward; the youngest

[1] Eyre used a sponge and a quart-pot. The natives, as effectively, with fine grass swept the dew into a smooth concave piece of bark.

stayed with Eyre, who determined to remain in camp for a few days, and thus complete the separation. On the fourth day they returned, Wylie frankly expressing contrition for taking the food and deserting, the other sullenly acquiescing. On the 27th April Eyre moved on. On the night of the 29th it was the turn of Eyre and Baxter to watch the horses. While Eyre tended them, from six till eleven o'clock, he was startled by the report of a gun. Hastening to the camp he met Wylie crying, "Oh, master, master, come here." Eyre rushed up to find Baxter weltering in blood, shot through the heart. No word did Baxter speak again. Eyre surmised that the natives were in the act of robbing, that his faithful friend had jumped up to stop them, and so had died. The thieves had carried off bread, tea and sugar, mutton (from the last sheep), a keg of water, two double-barrelled guns, and other articles. Eyre seemed alone as to counsel and help from man. Wylie, who was with him, had but a few days before absconded with one of the new robbers, who had now dipped their hands in blood. He had a rifle and pistols, but the rifle had a charge in it which the overseer had failed to extract, and the powder was thought to have been washed away. Determining to make this weapon useful, Eyre put the barrel into the fire, hoping to melt the bullet. Relics of the powder ignited, and the bullet whizzed past him as he held the barrel. This hair-breadth escape seemed trifling then. Eyre sadly shrouded his faithful overseer in a blanket, and travelled slowly and silently from the scene. Halting in the heat of noon he questioned Wylie, who denied all complicity in the murder or the robbery. At four o'clock the runaways appeared. Resolving to take the life of the elder of the murderers Eyre vainly sought to approach them. He parleyed. They said, "Oh, master, we don't want you,—we want Wylie." Wylie was proof against their invitations. Eyre pursued his journey, the murderers plaintively crying to Wylie, and travelling by the side of Eyre's route. Night did not make him pause. To shake off the natives he pushed on eighteen miles. On the 3rd of May, one hundred and fifty miles from the last water seen, he found a place where the natives had dug for water. His thoughts recurred to the blank in his party, and the manly pleasure Baxter would have felt at having mastered the long stage now

completed. Birds, hitherto unseen, appeared. The tyranny of the sand was overpast. But sickness produced listlessness in Wylie and his master.

"After sitting for a few moments to rest, and we often had to do this, it was always with the greatest unwillingness we ever moved on again. I felt on such occasions that I could have sat quietly and contentedly, and let the glass of life glide away to its last sand. . . . Wylie was even worse than myself. I had often much difficulty in getting him to move at all, and not unfrequently was compelled almost forcibly to get him up. Fortunately he was very good-tempered."

The runaway natives were never heard of more.[1]

Steering for Lucky Bay where, from Flinders' account, he reckoned on finding water in abundance, Eyre saw a French whaler in a bay to which he gave the captain's name, Rossiter. Heartily welcomed, the two travellers were refreshed and kindly cared for, for a fortnight, and resuming their journey reached Albany on the 7th July, 1841. A native met them outside the settlement, recognized Wylie, told him that the tribe had given him up for lost, darted ahead, and—

"clearly and powerfully his voice rang through the recesses of the settlement, whilst the blended name of Wylie told me of the information it conveyed. For an instant there was a silence still almost as death, then a single repetition of that wild joyous cry, a confused hum of many voices, a hurrying to and fro of human feet, and the streets which had appeared so shortly before gloomy and untenanted were now alive with natives, men, women, and children, old and young, rushing rapidly up the hill to welcome the wanderer on his return, and to receive their lost one almost from the grave. Affection's strongest ties could not have produced a more affecting and melting scene; the wordless weeping pleasure, too deep for utterance, with which he was embraced by his relatives, the cordial and hearty reception given him by his friends, and the joyous greeting bestowed by all, might well have put to the blush those heartless calumniators, who branding the

[1] In January 1882, when South Australia had practically extended her sway over regions which none but the adventurous and hardy could explore in 1840, the natives found and gave to a workman on the telegraphic line the remains of Baxter. As they delivered a gun at the same time, with other relics of Eyre's expedition, it may be inferred that the deserters perished near the scene of Baxter's murder.

savage as the creature only of unbridled passions deny to him any of those better feelings and affections which are implanted in the breast of all mankind, and which nature has not denied to any colour or to any race."

Eyre returned by water to Adelaide after an absence of more than a year. The account of his travels was published in 1845, and even then the idea of a central sea was sufficiently entertained to demand the refutation which he gave it in his concluding remarks.

Although Gipps Land was not explored until 1840, its occupation may be mentioned here, as it was synchronous with Eyre's journey to Western Australia. Lachlan Macalister (an officer of the 48th Regiment) had commanded a portion of the mounted police soldiery; had retired from the army, and had become a settler. His overseer McMillan (Macalister was always surrounded by countrymen, many of whom knew no language but Gaelic) was sent with a black boy to discover fresh pastures for his master's cattle. Natives had spoken of promising spots in the country between the Ninety Mile Beach and the Australian Alps. McMillan was at Omeo in June 1839. Guided by the Omeo natives he occupied Mumblamunjee, on the Tambo river, for Macalister in September 1839. The natives also piloted a person named Buckley, who formed a cattle station on the same river. Both stations were among the mountains, near the dividing range between the waters of the Murray and those which flowed towards the Ninety Mile Beach. From favourable prominences on that range the plain country of Gipps Land could be seen; and obeying the order of his master, who was anxious to secure some of it, in December, 1839, McMillan, accompanied by a nephew of his employer (Matthew Macalister), by one Cameron, and a stockman named Bath, started for the low country. A horse fell over a precipice, and the party returned unsuccessful. In January they set forth again accompanied by two Omeo natives, Cobborn Johnny and Boy Friday, who piloted them, after four days of severe travel, to the land of promise. No white man had been there previously. Some natives when they saw McMillan dismount from his horse yelled and fled. Strange as a horseman appears when first seen, the wonder is increased when he dismounts and two moving

animals are resolved out of that which seemed one. When he reached Lake King McMillan thought he was at Corner Inlet. Proceeding westward he named the Nicholson river after Dr. (subsequently Sir Charles) Nicholson, an intimate friend of Macalister; the river Mitchell after Sir Thomas Mitchell, the Surveyor-General; the highest mountain he could see Wellington (after the Iron Duke), and the river Avon. Near the Macalister river, having failed to establish friendly relations with the startled natives, he pursued a party of them and captured an old man. He gave the prisoner a knife and a pair of trousers, and let him go. Having shaken hands with the travellers at their instigation, the old man shook the bridle of each horse with care before he retreated to his tribe. At this point McMillan regretted that his companions desired to return to Mumblamunjee. They had been sixteen days on the path. Piloted by Cobborn Johnny and Boy Friday they returned in seven. McMillan, in an account he sent to Mr. Latrobe in 1853, plumed himself upon his success in an exploration in which he had only a compass and the chart of Flinders to aid him. But the Omeo natives led him throughout the journey, and he knew so little how to use his chart that he returned with a belief that Lake King was Corner Inlet. He called the new district Caledonia Australis. Macalister, on receiving McMillan's report, instructed him to form no more stations before finding his way to Corner Inlet. Another person about the same time was stirred to explore the country inland from the Ninety Mile Beach. Mr. James Macarthur (a son of Hannibal Macarthur), had already formed a station in Port Phillip. In sailing by the shore he surmised that good land would be found between Ninety Mile Beach and the mountains. Unconscious of McMillan's intentions or doings he matured his plans. Mr. James Riley,[1] then only nineteen years old, agreed to accompany him.

At Camden Park one of them met Strzelecki, who begged to be allowed to join them. They consented, but had sad forebodings when they found Strzelecki on foot, with a convict

[1] Readers in Victoria will recognize Mr. Riley as one of the earliest settlers on the Wannon river, as subsequently a resident at Geelong, and always respected in every capacity.

servant also on foot, prepared for the journey. The Polish Count had a pack-horse to carry his impedimenta. They started, nevertheless. Macarthur had a convict servant (a negro); and fortunately, like McMillan, took a native Australian, Charley Tarra (from Goulburn, in New South Wales), who was to preserve the lives of the party.

In February they were on the Murray or Hume river; and diverging from the stations already formed there, they ascended and named the highest point Mount Kosciusko. Returning from that exploit they found their way to Lake Omeo; and thence to Mumblamunjee on the Tambo river. The Macarthurs at Camden Park had ever been patrons of Macalister. In Argyle he had a station near one of theirs, and many friendly offices had been received by him. McMillan, though jealous of intrusion on the new country to which Cobborn Johnny and Boy Friday had led him, could hardly be inhospitable to his master's patrons. He was absent at the time, having gone to report to Lachlan Macalister the result of his journey. Matthew Macalister, who had accompanied McMillan to the low lands in January 1840, was at Mumblamunjee when Macarthur, Riley, and Strzelecki arrived there in March 1840. He accompanied them for one day's journey and described the route. Charley Tarra confidently said that he could follow the tracks easily, though they were two months old. He kept his word.

On the way Strzelecki, as a scientific man, was allowed to assume the guidance of the party after they had passed the bounds of McMillan's tracks. Strzelecki freely gave names to rivers, already christened by McMillan. The river Latrobe, which McMillan had not seen, retains the name given by Strzelecki. Others which he gave have been discarded. He named Lake King in honour of his friend Captain P. P. King, R.N. As McMillan had thought it was Corner Inlet, it escaped his nomenclature. When Strzelecki passed from comparatively open country to the dense wood and underwood tangled upon the watershed of the Upper Latrobe river, the provisions had been exhausted, and the horses and baggage were abandoned. The last ounce of flour was baked there, and the weary explorers resolved to walk to Western Port. The Count's idea of progress was directitude. He could not see that it was often easier to

walk round a hill than to toil up one side and stumble down the other. Confiding in his capacity to make observations and to plot a course, his companions yielded to him. If physical obstacles suggested any deviation from a direct course Strzelecki still held on his way. They had not fifty miles to go, but it occupied 22 days to struggle and to cut a way through the dense entanglement of trees, logs, saplings, shrubs, vines, and grass which impeded them. Sometimes a mile was the hard task of a day. They had to cut poles, and throwing forward one end to scramble along the level line occupied by the parallel poles lodged on the undergrowth. Their food was the native bear of the colonists (the *Phascolarctos*). Charley Tarra was its provider, though Riley's gun was occasionally useful.[1]

But the Polish Count could lay down an accurate course, and Western Port was reached at last. There some convicts, runaways from Van Diemen's Land, were found, housed in the dilapidated remains of the settlement formed by Governor Darling. They gave food to the travellers. Hospitality was ever an Australian virtue, and the outcasts of society were as openhanded as its favourites. The wanderers were borne in a boat across the waters of Western Port to the station of Mr. Robert Jamieson. Thence they walked to Melbourne.

Strzelecki was warmly welcomed, and crossed to Van Diemen's Land to pursue his researches, having named the new territory Gipps Land, in honour of the Governor. Young Riley, after recruiting his strength, returned with Charley Tarra for the abandoned horses and stores. Mr. John Rutledge and Pigeon (one of the New South Wales blacks whom Batman had taken to Melbourne), joined the expedition which, to Strzelecki's astonishment, was speedily successful. One live horse was

[1] The author asked one of the party—"Do you think any of you would have come out alive if Charley had not been with you?" The answer was decided—"Certainly not." Strzelecki presented his companions with a sketch of the route, and wrote in the corner, "from his fellow monkey-eater, P. E. De Strzelecki." In his book the Count was modest about himself, and silent about his companions and Charley. "Such were the difficulties (he says) that with the utmost exertion, stimulated by the sense of peril (in imminent danger of perishing), a progress of from two to three miles per day was all that could be accomplished." One wishes for some mention of his preserver.

recovered, one horse was found dead. All the Count's specimens were secured. Two expert bushmen, with two natives, selected better travelling ground than a scientific sage, who made his path like a line ruled upon a map.

But their path was not supposed to be easy for others to follow, and there was anxiety in Melbourne to discover a practicable way to the newly-found territory, removed but a short distance from land already occupied on the east of Port Phillip Bay. That others would follow Macalister's overseer was rightly assumed. It was deemed a prime necessity to open for them a road to the Melbourne markets.

McMillan meantime was busy. In October 1840, he travelled with 500 of Macalister's cattle and occupied a station on the Avon river. After four failures he found his way (14th February, 1841) to Corner Inlet, marking the trees on his way. He left his nephew with four men to build a hut and take care of the cattle. The men in the usual manner quarrelled with the natives at the Avon, and in November were driven away, and leaving the cattle, fled to Mumblamunjee on the Tambo. In December 1840 McMillan with six others returned to the Avon, and with firearms quelled the resistance of the natives, numbers of whom were shot. Whether from shame at running away, or disinclination to make known their subsequent revenge in killing the natives, McMillan kept the matter secret until applied to by Mr. Latrobe for information in 1853. In 1856, writing an account of his proceedings, he said he "had a desperate skirmish with the natives." As Sir George Gipps was not inclined to overlook barbarities, it is not difficult to account for McMillan's reticence in 1840.

While these events occurred, persons in Melbourne chartered a vessel (the 'Singapore') to convey them to the land of promise. Mr. W. A. Brodribb, Messrs. Kersopp, Kinghorne, Norman McLeod, McFarlane, A. Ranken, Dr. Stewart, and J. Orr sailed in her, taking with them Charley Tarra who had accompanied Macarthur, Riley, and Strzelecki. They discovered and named Port Albert, after Prince Albert. In like manner they named the Albert river. The Tarra river they named after their companion, who had saved the lives of Strzelecki's party. They sent back the 'Singapore' to Melbourne. Brodribb, McLeod,

Kersopp, and Kinghorne, with Charley Tarra, an overseer, and four men, remained to explore further, and found claims of occupation. They built a hut near the Albert river, and in March 1841 set forth to the interior. They were astonished to find the marked trees which indicated McMillan's recent route to Corner Inlet. They followed them to the Latrobe river, and saw the smiling country described by Strzelecki as intersected by the rivers which, from the Latrobe to the Tambo, find their way to the lakes of Gipps Land. They found and named Lake Wellington, and turned their faces towards Melbourne. Like Strzelecki's party they had to cut their way. Like him they were dependent for food upon the flesh of the native bear, procured for them by Charlie. They, like him, reached Jamieson's station on the inner shores of the waters of Western Port.

Subsequently Mr. Albert Brodribb (brother of W. A. Brodribb) with two or three others laboriously discovered a more practicable route to Gipps Land through the forest which intervened between the Kooweerup Swamp and the waters of the Latrobe river. There eventually a road was made, and there in 1879 a railway was opened for traffic. The partners in the expedition with the 'Singapore' endeavoured to secure a special survey of many thousand acres at Port Albert; and Mr. Latrobe, the Superintendent of Port Phillip, was favourably inclined to their views, but considered that a reserve of a mile square should be made for Government purposes. A surveyor had been sent by the Government. Mr. W. A. Brodribb with Mr. John Hunter proceeded to the spot, and high hopes had been formed, when suddenly a steamer, the 'Seahorse,' arrived with a passenger, Mr. John Reeve, who had paid £5120 into the Melbourne Treasury and carried an order to select 5120 acres at or near Port Albert. The 'Seahorse' also bore despatches from Sir Thomas Mitchell, the Surveyor-General, instructing the surveyor to measure no more land for special surveys, and to mark no township reserve without further orders from Sydney, but to survey the country and furnish his maps to the Surveyor-General.

Mr. Brodribb and his brother-speculators, one of whom, Mr. Orr, had paid £5120 into the Treasury on account of their special survey, protested against the disturbance of their plans.

Mr. Latrobe communicated with Sir George Gipps. When the surveyor's charts were sent to Sydney it was ordered that a large block should be marked off as a Government reserve between the Albert and Tarra rivers, and that Mr. Brodribb and his friends should be allowed to select their special survey outside of the Government reserve. They protested vainly against the decision. The commercial panic of 1841 had paralyzed business in Melbourne, and the Port Albert special survey having involved its projectors in much pecuniary loss and wasted energy, slipped from their hands, though it was marked as Orr's special survey on the Government charts, between the Albert and Tarra rivers, northward of the Government reserve. Mr. John Reeve, after some trouble, was allowed to select his 5120 acres on the north of the Tarra river. It is almost needless to say that flocks and herds were rapidly sent from New South Wales to Gipps Land, which was soon studded with the ordinary homesteads of squatters.

As Strzelecki promptly reported to the Government all that he had seen, and Macalister's proceedings had not been made known, it was natural that the name given by Strzelecki to the newly-found district should be adopted. The Count's map was printed in the House of Commons Papers of 1841. His accompanying report displayed no desire to deprive others of credit, for it spoke of "Mr. Buckley's and Mr. Macalister's stations (on the Tambo), the first two pioneers into Gipps Land." Much having been written controversially on the question, it has been necessary to give accurately the dates and details.

The narration of discoveries has, however, run into an era far beyond the beginning of Sir Richard Bourke's reign, and it is requisite to recur to the extension of occupancy during that period. Batman had been foiled in 1827 by Governor Darling's refusal to allow him to settle at Western Port. Sturt's journey on the Murrumbidgee again kindled his zeal. In 1831 a serious project for colonizing South Australia was broached. It culminated in an Act of Parliament in 1834. In that year also Mr. Thomas Henty, by the agency of sons, actually occupied Portland Bay. Mr. Henty had been attracted by the offer of grants of land at Western Australia. One of his sons, James, went thither to examine the land, but distrusted its appearance and went on

to Van Diemen's Land, whither the family followed. On arrival they found that the system of free grants of land had recently been abolished. Disconcerted by the change, and having an order for 80,000 acres at Western Australia, Mr. Henty, in 1832, sent his son Edward to examine again the land previously disapproved of. Edward Henty agreed with the disapproval, and examined land in South Australia and on the coast of Port Phillip, where sealing and whaling stations of a temporary nature had long existed, at Portland Bay, and elsewhere. Mr. Henty determined to form a permanent establishment at Portland Bay, and despatched thither the schooner 'Thistle' with his son Edward, and live stock, agricultural implements, and building material. A whaling station was formed at once. Ploughing was commenced on the 6th December. The soil of Victoria was thus first permanently occupied. Other sons, Francis, Stephen, and Thomas, followed. Mr. Henty applied officially for recognition, and Colonel Arthur vouched that the Hentys were "highly respectable" and deserved recognition "so far as it can consistently be given." The Secretary of State, however, reprehended the conduct of Mr. Henty, "who must have been aware when he made arrangements for proceeding to his intended destination that he could have no security that his residence there would be permitted to continue." Henty was, however, in occupation, and Batman resolved not to be outdone. With or without permission he would go to the inviting land which his countryman Hume had trodden in 1824. On the 10th May, 1835, he was on board of the 'Rebecca' (15 tons) with several of his aboriginal friends from New South Wales. Detained by contrary winds he did not reach Port Phillip till the 29th May. He had Flinders' chart. He saw the Yarra-Yarra river laid down in it. Thither he directed his course. He landed at Indented Head. He examined Corio (now Geelong), the bay called Geelong by the natives, the country at Villanmanata (now Station Peak), at the Salt Water river, the Merri Creek, and the Yarra-Yarra at the present site of Melbourne.

Accustomed to the densely wooded Tasmania he was charmed with the open grassy plains, which he described as "marvellously fertile." "I never could have imagined it possible (he wrote) that so fine a country existed on the face of the globe." Yet he

trod in the footsteps of Hamilton Hume, whose journal had been published. His operations were aided by the natives of New South Wales, who had so often assisted him. On the night of his arrival he saw some camp-fires. On the 31st May, near the mouth of the Werribee river, his natives equipped themselves in Australian fashion and walked to the camp, which was found deserted. The tracks of the fugitives were quickly followed, and twenty women, with twenty-four children, were found after a pursuit of ten miles. Batman's companions made friendly signs, which were recognized, and the fugitives halted. The whole party returned to the camp, beyond which the women were loth to go, the interpreters being informed that it was dreaded that Batman would "take them by force and ill-use them, as some of their tribe had been already." Some of the New South Wales natives understood, or seemed to understand, the dialect of the place, and explained that no violence need be dreaded. Batman gave assurance of friendliness, and presented necklaces, looking-glasses, blankets, tomahawks, knives, and scissors, and left them in peace, hoping that their narrative to their friends would win favour. A few days afterwards he was guided by a man, woman, and three children, and met a friendly reception from a band of fifty-five, of whom twenty were men.

Batman was profuse in promises, and the "chiefs appeared most fully to comprehend my proposals, and delighted with the prospect of having me to live among them." On the banks of the Merri Creek, near the modern Northcote, on 6th June, 1835, Batman made a parchment contract with three brothers, whom he called Jaga-Jaga, and with chiefs of the Dutigalla tribe. For various articles, blankets, knives, etc., he obtained their signatures purporting to "grant, enfeoff, and confirm" to him and his assigns the territory from Merri Creek, including the site of Melbourne, to Indented Head. More than half a million of acres were to be his, charged with an annual tribute of blankets and other articles, to the three Jaga-Jagas, and to Cooloolock, Bungarie, Yanyan, Moowhip, and Monmarmalar. The deed, prepared beforehand in Van Diemen's Land by some of Batman's intended partners, was signed, sealed, and delivered in triplicate on the "Banks of Batman's (the Merri) Creek."

Batman informed Colonel Arthur, 25th June, 1835, that the

"chiefs proceeded with me to the boundaries, and they marked with their own native marks the trees which were at the corners of the boundaries, and they also gave me their own private mark, which is kept sacred by them, so much that the women are not allowed to see it."[1] . . . "They each delivered to me a piece of soil for the purpose of putting me into possession thereof, and understanding that it was a form by which they delivered to me the tract of land." He transmitted to Colonel Arthur copies of his deeds; said that he had "traversed the country in opposite directions about fifty miles, and having had much experience in lands and grazing in New South Wales and in this colony, I have no hesitation in asserting that the general character of the country is decidedly superior to any which I have ever seen." The downs, which Batman (like Hume) was told were called Iramoo by the natives, were "extended on every side as far as the eye could reach, thickly covered with grass of the finest description." He called the Yarra-Yarra river the Batman river. He announced the names of the gentlemen associated with him in the colonization of Port Phillip as Henry Arthur, C. Swanston, H. Wedge, Thomas Bannister, J. Sinclair, J. Simpson, J. T. Collicott, J. T. Gellibrand, A. Cotterell, J. and W. Robertson, W. G. Sams, M. Connolly, and George Mercer. They would have at least twenty thousand breeding ewes on their lands in 1835.[2] Batman's chart showed that he had selected as the site of his township a block of land including the whole of Emerald Hill on the south, and Melbourne on the north bank of the Yarra-Yarra. The names were substantial, and Henry Arthur was the Governor's nephew; but the Governor informed Batman on the 3rd July that Port Phillip was not in his jurisdiction, and that to recognize his treaty "would appear to be a departure from the principle upon which a Parliamentary sanction, without reference to the aborigines, has been given to the settlement of South Australia as part of the possessions of the Crown." He added that Mr. Henty's application had been

[1] Perhaps one of those marks used at the ceremonial grounds where youths were inducted into their tribe. They were various. Neither women nor children were allowed to see them.

[2] Batman's letter and his chart may be seen in a House of Commons Paper ordered to be printed 1st August, 1836. His journal was published in the colony.

declined on similar grounds. He would forward Batman's report to England, and testify to Batman's humane consideration and the respectability of his associates.

Batman, like Henty, proceeded without permission. Arthur foresaw that he would do so, and warned the Secretary of State that "as the Company will probably proceed at once to take possession, and as other individuals may follow . . . I cannot, I most respectfully submit, be made acquainted at too early a period with the views which His Majesty's Government entertain upon this very important subject." The settlement might, he thought, be placed temporarily under jurisdiction of the Supreme Court of Van Diemen's Land. But before replies could be sent from England Governor Bourke intervened. On the 26th August, 1835, he issued a proclamation declaring:—

"Whereas it has been represented to me that divers of His Majesty's subjects have taken possession of lands of the Crown within the limits of New South Wales, under the pretence of a treaty, bargain, or contract for the purchase thereof with the aboriginal natives, now therefore I, the Governor, do hereby notify, &c., &c., that every such treaty, &c., &c., is void as against the rights of the Crown, and that all persons found in possession, &c., without license . . . will be considered as trespassers."

Sir Richard Bourke was nevertheless himself in a dilemma. In 1834, on his favouring a project to form a settlement at Twofold Bay, the Secretary of State told him that "His Majesty's Government are not prepared to authorize a measure, the consequences of which would be to spread over a still further extent of territory, a population which it was the object of the recent land regulations to concentrate." Referring to the dictum of Lord Aberdeen, Bourke wrote (10th October, 1835):

"It is only on account of the question being forced upon me by (Batman's proceedings) that I am induced to revert to the subject. . . . Admitting, as every reasonable person must, that a certain degree of concentration is necessary for the advancement of wealth and civilization, and that it enables Government to become at once efficient and economical, I cannot avoid perceiving the peculiarities which in this colony render it impolitic and even impossible to restrain dispersion within limits that would be expedient elsewhere. . . . The proprietors of thousands of acres already find it necessary, equally with the poorer

settlers, to send large flocks beyond the present boundaries of location to preserve them in health throughout the year. The colonists must otherwise restrain the increase, or endeavour to raise artificial food for their stock. Whilst nature presents all around an unlimited supply of the most wholesome nutriment, either course would seem a perverse rejection of the bounty of Providence; and the latter would require more labour than can at present be obtained in the colony or immigration profitably supply. Independently of these powerful reasons for allowing dispersion, it is not to be disguised that the Government is unable to prevent it. No adequate measures could be resorted to for the general and permanent removal of intruders from waste lands without incurring probably a greater expense than would be sufficient to extend a large share of the control and protection of Government over the country they desire to occupy. One principal objection to dispersion thus becomes as powerful against its restraint."

He admitted that the formal occupation of Port Phillip would seem premature, were it not necessitated by Batman and his associates, and he transmitted a detailed account of their proceedings and their alleged contract with the natives. There was little doubt, he said, that they would continue to convey cattle to Port Phillip and to invest capital there. The problem to be solved was, "How may this Government turn to the best advantage a state of things which it cannot wholly interdict?" He suggested that it might be found practicable by sales of land in advantageous situations "to procure the means of diminishing the evils of dispersion, and by establishing townships and ports, and facilitating the intercourse between the remote and more settled districts of this vast territory, to provide, though but imperfectly, centres of civilization and government, and thus gradually to extend the power of order and social union to the most distant parts of the wilderness." It was therefore desirable to impose reasonable conditions on "Batman and his associates, rather than insist on their abandoning their undertaking."[1] He would mark out a town on some eligible spot on the coast. He earnestly recommended the formation of schools there on the

[1] Without any connection with Batman's proceedings, the hands of the Governor were somewhat strengthened in 1836 by an Act to restrain unauthorized occupation of Crown Lands, which sprung from the necessity pointed out in 1835 by a Select Committee on the Police (hereafter described), to prevent persons of bad character from establishing themselves on Crown Lands.

"plan (Lord Stanley's) now adopted in Ireland." To refrain from introducing the various institutions of society, through the fear of encouraging dispersion, was a fallacious policy. With such bated breath was it needful to approach the Colonial Office in pleading for an extension of occupied territory.

Lord Glenelg (13th April, 1836) in reply accepted Bourke's reasonings, and in vague phrases endeavoured to reconcile the permission to occupy Port Phillip with "the principles which form the basis of the rules according to which land is disposed of in the Australian colonies." Lord Ripon had not "contemplated concentration of the people as the ultimate end to be aimed at." If his information was correct "the Eastern shores of New Holland presented physical impediments to concentration, with which it would be only futile to contend by human laws. The principle of counteracting dispersion, when reduced to practice, must unavoidably be narrowed within the limits which these physical peculiarities of the colony dictate and require." Perhaps indeed the settlers at Port Phillip and Twofold Bay had "given birth to undertakings which deliberate reflection would have recommended rather than discouraged." In fine, Lord Glenelg, on the part of the Colonial Office, ate the leek with good grace, and left Bourke free to exercise his own judgment "on a subject so novel and peculiar."

Events meantime had been thickening on the scene of action. On the day (10th October) in which Bourke's despatch had been written, Mr. J. P. Fawkner[1] first found his way to Batman's

[1] Fawkner sailed with others in the schooner 'Enterprise' on the 27th July, 1835, but encountered rough weather, was ill, and was put on shore. The schooner proceeded, not to Port Phillip, but to Western Port. The passengers did not like the appearance of the place, and on the 15th August, resolved to follow Batman's example and examine Port Phillip. They found no suitable place on the east shore of the Bay, and on the 20th August the 'Enterprise' anchored in Hobson's Bay. After some labour the master (Hunter) moved the vessel up the Yarra-Yarra to the site of Melbourne. Batman had not at that time completed his arrangements for transporting live stock and forming his permanent settlement, and Hunter may have been ignorant of Batman's choice. Mr. Wedge, however, one of Batman's associates, arrived soon after Hunter, and warned Hunter of Batman's claims, on the 2nd September. The facts and the comments they caused may be found in the 'John Batman' (Melbourne, 1867) and the 'Port Phillip' (Melbourne, 1856), of Mr. J. Bonwick; and in my own 'Discovery, Survey, and Settlement of Port Phillip' (Melbourne, 1871, and London, 1872).

settlement, in which he was destined to play for many years an active part. His friends and himself were so ill-advised as to assert his priority in selecting the site of Melbourne, and Batman's premature death favoured the reception of erroneous views. Early documents, including Batman's chart, irrefragably prove Batman's priority. Flinders' chart, based on his own examination and on the survey made by Grimes in 1803 by order of Governor King, proves with equal certainty that the course of the Yarra-Yarra was accurately mapped in 1803, and was published to the world in 1814. Some disagreements occurred between Batman and Fawkner. It is only necessary to say that after some bickering, amidst which Batman's associates feared that he might resort to force, Fawkner was for a time got rid of by the gift of £20. He went to the south bank of the river, but returned to Melbourne when he found that Batman's association could not assert exclusive rights.

The Port Phillip district required only to be seen in order to attract thousands. From New South Wales flocks and herds poured in by land. From Van Diemen's Land they went in small coasting vessels. Sheep-runs within a few miles of a port were secured by the first comers. Excitement pervaded the older colonies; eagerness and haste were the characteristics of the new. Such soil as stretched westward from Melbourne to Portland Bay had never before been seen in such compactness in Australia. The worthless ridges, which often separated one Australian water-course from another, were rare. A volcanic region, rich in parts as the plain of Campania and in others dry and elevated enough to suit the Merino sheep, courted occupation, and in 1836 made Sir Thomas Mitchell exclaim that it was another Eden.

Whatever might be the misgivings of the Home Government, settlement could not be arrested, and in 1836 Bourke, fortified by the receipt of Lord Glenelg's despatch above-quoted, sent down an officer to make temporary arrangements. The principal inhabitants met at Batman's house and asked for a police magistrate and civil protection. Meanwhile they elected Mr. James Simpson as an arbitrator amongst them. Decrees without compulsive powers would have been futile, and Sir Richard Bourke anticipated the difficulty by despatching (before he

received the request of the settlers) Mr. George Stewart, a police magistrate, who reported his proceedings on the 10th June, 1836. The residents would, he thought, be "much gratified if the Government would extend to them its protection." They appeared "to be treating the blacks with great kindness." A commander of "a sealing vessel," accused of carrying off native women from Western Port, had been killed by the natives at Spencer's Gulf; and a stockman who attempted to violate one of the native women at Port Phillip had "been sent back to Van Diemen's Land by Messrs. Wedge and Batman, with which punishment the friends of the female were quite satisfied." Mr. Stewart gave blankets to the natives he saw, and left more with "Messrs. Wedge and Batman" for distribution.

Sir Richard Bourke found an upright officer, Captain W. Lonsdale of the 4th Regiment, willing to become police magistrate, and despatched him to Port Phillip in H.M.S. 'Rattlesnake' under Captain W. Hobson, after whom Hobson's Bay was eventually named. Batman aided Lonsdale loyally, but there were others so ill-pleased at his diligence that a Launceston newspaper declared his "general behaviour was so annoying" as to induce the settlers to petition for his removal. The Governor sent with Lonsdale a customs officer and tide-waiter, the "constant intercourse with Launceston rendering an immediate arrangement necessary," and despatched three land surveyors to Port Phillip. The whole of the charges of Government he proposed to defray, "for the present, from the revenues of Crown lands," which would be augmented by the sale of the lands of the district. He invited[1] Batman to send some part of his company "to arrange the terms on which the association will be permitted to retain some small part of the land they had taken possession of." The contiguity of South Australia, and the absence of official instructions about that colony, were a source of anxiety to him.

"I beg leave to observe that although I find by the Act of Parliament that the Southern Australian Company have received authority to occupy a large portion of the territory placed by His Majesty under the Government of New South Wales, I have no intimation whatever

[1] Bourke to Lord Glenelg. Despatch, 101. 15th September, 1836.

of the circumstance, nor of the formation or proceedings of the Company, from His Majesty's Government. I have been led to make this observation from remarking that the part of Port Phillip called Geelong, which will probably be used as the harbour, is not above 100 miles distant from 142° East longitude, which forms the Eastern boundary of the Company's grant. The flocks of the colonists will probably ere long be spread over the intermediate space, and with them convict servants will be brought within the neighbourhood of the Company's possessions. If this should prove an inconvenience it must be remedied in the best way it can. It would have been quite impossible to have restricted the settlers of New South Wales or Van Diemen's Land from the use of convict servants in the district of Port Phillip."

In a notice in the New South Wales Government 'Gazette' (September 1836), Bourke promulgated the fact that Port Phillip was formally opened for settlement. The land regulations would be the same as those in force in New South Wales. Prior occupation would confer no advantage. Conveyance by a legal instrument from the Government was essential, "as without such title the land (unless required for public purposes) will be subject to be put up for competition at a public sale, and sold to the best bidder."

Full instructions were given to Lonsdale; and to enable him to form a bench of magistrates, a subaltern officer of a detachment was put into the commission of the peace. Lonsdale was to protect the natives from all "manner of wrong," and was to give a salary to the white man[1] Buckley, whom Batman had found with the natives, and had at once attached to himself by kindness and payment. Lonsdale was not to prevent free persons, with or without stock, from passing into the district, nor "to disturb the occupation of those already there so long as

[1] Buckley, a convict who escaped from the temporary settlement made by Colonel Collins in 1803, joined Batman's people in 1835. He was of some use in communicating with the natives, who throughout his long sojourn amongst them had been kind to him. It was remarked that he was no more intelligent than they. They thought themselves as intelligent as he. He was pensioned, and employed in an easy capacity at Hobart Town for many years. He was more than six feet high; and his gaunt figure was pointed out to visitors in Tasmania for more than 20 years after his return to his countrymen.

they conduct themselves honestly and peaceably," but occupiers would have no advantage at the time of sale, and should be cautioned against making improvements in the mean time. If he desired to remove any one from Crown lands he was not to scruple to use all legal means. "If payment of the fine imposed on unauthorized occupation be not made, the offender must be committed to Sydney gaol for the period specified by 5 Will. IV. No. 22."[1] It was hoped however that by moderation and firmness so disagreeable a proceeding might be wholly avoided. Bourke himself appeared on the scene in March 1837, accompanied by Captain (afterwards Admiral) P. P. King, son of the Governor who had named Port Phillip. He laid out and named Flinders and other streets; christened Melbourne and Williams Town; visited Geelong, and had interviews with "settlers on the banks of the Barwon." He ascended Mount Macedon. He ordered that land should be sold. On the 1st June, 1837, town allotments in Melbourne were first sold. Four months later more were called for and offered. Suburban allotments were bought in 1838, and Melbourne was a thriving settlement. Allotments in Melbourne purchased in 1837 for £30 or £40 were sold within thirty years for £40,000. Bourke informed Lord Glenelg of his proceedings thus :—

"I found on my arrival on the spot selected for a settlement by Mr. Batman on the banks of the Yarra river at the head of the inland sea called Port Phillip, an assembled population consisting of from sixty to seventy families. The situation appearing to be well chosen, I directed a town to be immediately laid out, which your Lordship will perceive by the map has received the name of Melbourne."

(Various names had previously been used conventionally.) Provisionally he named the county of Bourke.[2] By the "kind assistance of Captain King, R.N." he was enabled to transmit a sketch of the lands adjacent to Port Phillip.[3] He directed

[1] Communication with Sydney was so rare that duplicate despatches were sent *vid* Launceston. Committal to Sydney was therefore a long banishment.

[2] I have at the desire of the residents permitted my name to be attached on the MS. (map of the county), awaiting His Majesty's gracious allowance before publication.

[3] Captain King's family preserve a letter written by him from Port Phillip in 1837. It tells how while the vice-regal party ascended the Yarra in the man-of-war's boat, a procession of whale-boats did honour to him;

that 100 allotments should be offered for sale in order to place the families of the settlers "with as little delay as possible on properties of their own." Already he said the population of the district exceeded 500 souls, and the sheep were more than 100,000. The pasture land was "superior in quality to the average of the districts of New South Wales." He recommended the appointment of a Lieutenant-Governor or Commandant. Communication with Sydney was so difficult that constant reference thither would be inconvenient. By land in the existing state of the country ten days would be consumed. By sea there were no steamers of sufficient power to be depended upon, and it would be costly for the Government to maintain one. He would not however establish a separate legislative body. "There would be no great inconvenience in requiring the attendance at Sydney for the session of those who might be appointed or elected members of the colonial legislature." He would desire to appoint a fourth Judge of the Supreme Court in order that a Judge "might be available for holding assizes twice a year at Port Phillip." Captain Lonsdale had been able and zealous, and had paid great kindness and attention to the natives. Bourke indulged "a hope notwithstanding some unfortunate occurrences that the intercourse between these natives and the white population of Port Phillip will be carried on with greater benefit

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how muskets were fired and cheering was heard on the river between the dense fringes of tea-tree (melaleuca) which lined its banks; how on landing Bourke received the "heads of departments and settlers;" how he rode round the township and "marked its boundaries which embrace about a mile of river frontage;" how at 5 p.m. on the same day he received an address of congratulation and made a suitable reply; how it was found that a goose sent as a present to Mrs. Lonsdale from Sydney, and with a gander cared for in the ship which bore the Governor's party, had been slain for the Governor's dinner, and how Governor and gander were disconsolate; how the scattered settlement consisted of perhaps "30 or 40 huts—some of sods—others framed and weather-boarded, others wattled and plastered. The framed houses have all been sent from Sydney and Launceston." The summer had been dry and the ground was parched near Melbourne, around which some of the settlers collected their stock to the annihilation of all herbage. On the Salt-Water river tributaries, in travelling to the top of Mount Macedon, Captain King saw the kangaroo grass (*Anthistiria ciliata*) rich and tall. From the top of the mountain he took numerous bearings, and found how thoroughly trustworthy had been the observations of Sir Thomas Mitchell in 1836.

to the former than has hitherto been experienced in other parts of the colony."

Meanwhile Batman's Association had laid siege to the Colonial Office. They prayed that the Crown would "relinquish any legal point of constructive right to the land in question." In January 1836, one of them, Mr. Mercer, wrote from Edinburgh to point out the humane character of Batman. He asked for recognition of Batman's treaty, or for a royal grant of the territories. As the Association were already in possession of the opinions of such eminent men as Pemberton, Burge, and Sir W. Follett, that the Crown was in no manner concluded by Batman's arrangements, they could hardly be surprised when Lord Glenelg replied that Port Phillip was part of the colony of New South Wales, and that no land could be acquired there except on terms prescribed under Sir R. Bourke's commission and instructions. The efforts of the Association finally subsided into a struggle[1] for pecuniary allowance from the Colonial Government, and were ended, if not pacified, by a remission of £7000 of purchase-money at a land sale in 1838, in consideration "of expenses incurred by them in the first formation of the settlement." In approving all Bourke's proceedings, Lord Glenelg told him, in 1837, that as Port Phillip was far removed from Sydney, it was "essential that separate accounts should be kept of the sales of the Crown lands in the district of Port Phillip, and that the proceeds of such sales should be applied to the improvement of this new settlement, and especially in the introduction of free immigrants there, who would supply the demand for labour without the use of convicts." As far as practicable, Bourke was "to abstain from the assignment of convicts to the settlers in the Port Phillip district." "As to South Australia, it is important that in regulating the upset price of land in Port Phillip you should not exclude from your consideration the price below which land cannot be acquired within the colony of South

[1] A deputation, Messrs. Swanston, Gellibrand, and Simpson, pleaded for the Association in Sydney in 1836. The Governor and Executive Council seem to have taken a just view in "limiting their claims." The unassociated settlers who had followed Batman with live stock after the Governor had proclaimed the unlawfulness of their doing so, sent an agent to sue for favours, which were refused.

Australia."[1] Bourke had with the advice of his Council refused to allow Batman's Association to acquire land unless by the process of public sale. To have done otherwise would have opened the door for exorbitant and innumerable claims by others. Several millions of acres he thought would then "be required to satisfy the claims of those who have driven their sheep and cattle into remote and fertile districts, of which they may boast to have been the first discoverers."[2] "At present they expect no preference when their land shall be put up to sale." It was decided to allow the Association, by remission at land sales, the moneys expended under the erroneous impression that the land they prepared to occupy was not within the limits of New South Wales, and "that their bargain with the blacks was valid." Bourke strongly urged the Secretary of State to confirm this arrangement. Lord Glenelg signified his approval on the 10th July, 1837, and elaborately defended himself against the imputation of having encouraged Mr. Mercer to expect more favourable terms. He admitted that he had said it was reasonable that the sites of buildings, gardens, or other enclosures, might be excepted from general rules, but he had been cautious in stipulating that only such exceptions could be made "as might appear to the Governor to be reasonable." He could not admit "any inconsistency between the assurances conveyed to Mr. Mercer, and the ultimate decision which in deference to the opinion of the local government I now sanction and adopt." He had raised false hopes amongst the Association, and he had sorely alarmed the Governor, but he applauded himself. These incoherent intimations, however, did not reach New South Wales until Bourke was on the point of departure, and he had long retired from the scene before the name of the county of Bourke was, in compliance with the desire of the residents, affixed by Her Majesty's sanction to the metropolitan county of the settlement which had been established under Bourke's government.[3]

The occupation of South Australia connects itself with that of the adjacent province of Port Phillip. The accurate survey of Flinders was probably relied upon as sufficient to establish the

[1] Lord Glenelg to Sir R. Bourke, 31st May, 1837.
[2] Bourke to Lord Glenelg, 12th November, 1836.
[3] Lord Glenelg to Sir G. Gipps, 3rd April, 1838.

prior claims of the English to the territory. Sealers went and returned. Kangaroo Island especially was their resort, and was to some a permanent home. But Sturt's journey from Sydney to Lake Alexandrina drew speculative eyes to the land he described. The official report of his success reached England in 1830. In that year the sagacious Gibbon Wakefield had formed a Colonization Society, the object of which was "to substitute systematic colonization for mere emigration, and on a scale which would produce important effects on the mother-country."[1] The blunders at Swan River gave him a fulcrum. But it required an Archimedes to use it. He trumpeted his theory in a 'Colonial Gazette,' and he moved a small world of enthusiasts. Lord Goderich under influence of new opinions determined that the system of free grants of land in Australia should cease.

In 1831 a South Australian Land Company was formed. Mr. George Fife Angas was a member of the committee, with Messrs. W. Hutt, H. Bulwer Lytton, Colonel Torrens, and other members of Parliament. Fruitless negotiations for a charter were carried on with the Government, and according to Wakefield many of the disappointed hungerers for land joined "rebellious political unions or sailed for the United States where, though they prospered, they resembled Irish Americans in their feelings towards England." If his statement be true it shows in what excitable materials his doctrines first found fuel. But he inspired articles in the philosophic London 'Spectator' with such effect that Lord Howick (Under Secretary for the Colonies) thought it incumbent upon him to frame an official memorandum in 1831, to explain his position with regard to the promoters of the South Australian Land Company and the Colonial Office. The Company sent to Lord Goderich in 1832 a draft charter. When it was objected to, they expressed a readiness to accept modifications, and Lord Goderich alleged that their readiness to change proved their indefiniteness of plan. He eschewed the responsibility of providing them with another. When Mr. Stanley succeeded Lord Goderich in 1833, they laid siege to him. In the discussion which ensued they put forward elaborate arguments on charters of foundation, but he would not abandon

[1] 'Art of Colonization.' E. Gibbon Wakefield. London: 1849.

the objection of the Office to the retention of legislative power by the Company, and the scheme failed. But in 1834 the resilient colonizers reorganized themselves as a South Australian Association, and applied for an enabling Act. Members of Parliament abounded amongst them. Charles Buller, Grote the historian, Poulett Scrope, Benjamin Hawes, Colonel Torrens, and others of note were on the committee. Grote was treasurer, and Robert Gouger, whose name Gibbon Wakefield had made use of in 1829 as the editor of his "letter from Sydney," which broached the new ideas, was honorary secretary. Behind the scenes, unannounced, was the powerful writer, whose ideas Gouger had edited. Pamphlets appeared profusely. Up to a certain point Wakefield controlled all with whom he came into contact. The sequel was to prove that many had not the courage of his opinions, and vainly temporized between the existing and the possible. But to procure the passing of the necessary Act the platform was called in to help the press.

At a great meeting at Exeter Hall, Mr. Grote, Mr. Hutt, Mr. Poulett Scrope, and Sir W. Molesworth spoke. The latter moved a vote of thanks to Mr. Spring Rice for promoting "the beneficial public objects of the South Australian Association." But to win patronage for the Bill the political element of Wakefield's scheme was abandoned, and other portions were diluted.

The English Parliament accepted the idea that "something must be done." Swarming Englishmen were winging their way to new lands. If the Government would not follow them with institutions, it seemed that they would mismanage themselves without them.

A terrible mistake had been made at Swan River; and Gibbon Wakefield's letter and his new book ('England and America') seemed to explain the reason. No one could refute him, whether he was right or wrong. He had at least what others wanted—a theory. A portion of it the Government would accept. A price should be imposed on all lands alienated, but the "sufficient price" demanded by Wakefield involved too nice an equation to deal with. They would apply the proceeds to immigration, but the harmony sought for by Wakefield, which should ensure well-paid employment to all labourers, and

a sufficient supply of labour for all employers, was cast aside as visionary. A Bill passed through Parliament in August 1834. There was opposition, but there was also apathy. It was past two o'clock in the morning on the 25th July when the second reading came on before almost empty benches. A member moved that the Bill be "read a second time that day six months." There were thirty-three noes and seventeen ayes. Wolryche Whitmore, Colonel Torrens, George Grote, and Spring Rice, spoke in favour of; Mr. O'Connor, Hughes Hughes, Sir H. Willoughby, opposed the Bill. Four days afterwards Mr. Baring entered the lists. Why, he asked, should Government abdicate their functions in favour of a company of experimental philosophers? Let them have sixty or a hundred miles square to operate upon somewhere, but not an immense tract of country like the one proposed. A weaker antagonist appeared in shape of a Mr. O'Dwyer, who objected to emigration of "a bold peasantry" when there were two millions of reclaimable bog in Ireland. Mr. Whitmore replied that it was more politic to promote emigration to Australia than to America; and Spring Rice, Secretary for the Colonies, pointing out that the reclaimable acres in Ireland were private property, announced that the Government lent their aid to the Colonization Society not as a joint stock company, but to carry into effect the recommendations of the promoters of the Bill, "whether they were philosophers or not." There were seventy-two in favour of, and only seven divided against, the Bill. On the 2nd August, Mr. Hughes Hughes withdrew his opposition, and the Bill passed. Spring Rice in the Commons, and the Marquis of Lansdowne in the Lords, declared that it was sanctioned by the Government after careful consideration, because they believed it was founded on sound principles. The promoters expressed special thanks to the Duke of Wellington, who, though at first inclined to shrink from the experiment as rash, conscientiously examined and sanctioned it.[1]

[1] It was almost by an accident that the Duke became the champion of the measure. It had been postponed in the House of Lords on the 8th of August. The days of the session were numbered. The Duke himself had deprecated hasty proceedings in such a scheme. Gibbon Wakefield resolved that he should be approached; and wrote afterwards: "He assiduously examined our plan, came to the opinion that the experiment ought to be

The Act (4 and 5 Will. IV. cap. 95) empowered the Crown to establish provinces in the South Australian territory; to appoint legislators; Commissioners who should have power to survey and sell lands at an uniform price, "at no time for a lower price than twelve shillings per acre" (the Land Fund constituting an Emigration Fund); and a Resident Commissioner in the province. Various ancillary provisions were made. The Commissioners were authorized to borrow money, to provide an Emigration Fund, in anticipation of the land sales. A special clause forbade the transportation of convicts to the new territory. For any of the provinces which might contain fifty thousand souls, His Majesty might establish constitutions of local government. Twenty thousand pounds were to be invested in Exchequer Bills as a security that no part of the expense of founding the colony should "fall on the mother-country," and if after twenty years trial the population should be less than 20,000, the Crown could step in and sell the land in the province. In order to pass even such a Bill, Wakefield and his disciples made so many concessions that it was in his view defective, and contained vicious provisions. The Colonial Office would not even appoint the Commissioners desired. Whitmore and Grote were excluded. However, in May 1835, the Crown appointed eight Commissioners. Colonel Torrens was chairman. Mr. G. F. Angas was a member. Mr. Rowland Hill, not then celebrated as a great Postal Reformer, was Secretary to the Commissioners. They issued a prospectus in which they professed to embody some elements of the new system. The "sufficient supply of free labour" was to be secured by "requiring every applicant for land to pay a certain sum per acre to a general fund to be employed in carrying out labourers." Arguments were added to enforce the fairness of this requirement.

Sir Charles James Napier was recommended for the post of

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tried, and then with a straightforward earnestness that belongs to his nature, and with a prompt facility for which his great personal influence accounts, lifted our poor measure over all obstacles." Wakefield intended to name the new metropolis, Wellington, in order to mark the turning-point in the fate of the Bill. Being "shabbily frustrated" in this, he afterwards induced the New Zealand colonizers to give the name "Wellington" to the spot "most likely to become the metropolis of the Britain of the South." E. G. Wakefield. 'Art of Colonization.' 1849. J. W. Parker. London.

Governor, but in characteristic language he declined to accept it without "some troops and power to draw on the Home Government in case of necessity." Lord Glenelg declined to accede to such terms. Captain Hindmarsh, R.N., was next selected and was appointed by the Government. He had been thanked by Lord Nelson for his gallantry on board the 'Bellerophon' at the battle of the Nile. Mr. J. H. Fisher was appointed Resident Commissioner for the Colonization Commissioners, and Colonel Light was made Surveyor-General, Mr. Robert Gouger was Colonial Secretary, Sir J. W. Jeffcott was to be Judge.

A South Australian Company was formed, and declared (by its chairman Mr. J. F. Angas), that in January 1836 it had fitted out three ships which would lose "the whaling season" if not at once despatched; and the Colonization Commissioners were therefore earnestly intreated to hasten the sailing of Governor Hindmarsh and the surveying staff. Before they left, the Government were surprised to find that, in the opinion of the law officers, the Commissioners and not the Government had (under the South Australian Act) control of moneys raised to the extent of £200,000, "for defraying the necessary costs, charges, and expenses of founding the said intended colony, and for providing for the Government thereof," &c.[1] Vessels left England in February; two of them ('Duke of York' and 'Lady Mary Pelham') arrived in July, and landed the emigrants at Nepean Bay in Kangaroo Island. There, it was supposed, the capital of South Australia might be fixed. Neither by the Government nor by theoretical colonizers had the point been determined. The new arrivals were possessed of land orders, and they exercised some of them in selecting allotments at Kingscote in Kangaroo Island, a contemplated capital.

Colonel Light, in the 'Rapid,' arrived in August, and saw no charms at Kingscote. After exploring in the neighbourhood, he crossed to the mainland, and conceived that on the east of the Gulf of St. Vincent, the capital should be formed. He had been instructed to examine Port Lincoln on the west of Spencer's Gulf, however, and he went thither only to see reason to condemn it. He returned to Holdfast Bay, and fixed

[1] 4 and 5 Will. IV. cap. 95, s. 18.

upon the site where Adelaide now stands, on the banks of the Torrens. His choice was vehemently opposed by many of the emigrants, some of whom were anxious to place the capital at Encounter Bay. Nine ships arrived in 1836, with more than 500 souls. Governor Hindmarsh, in H. M. S. 'Buffalo,' appeared on the 28th December, and in the tent of the Colonial Secretary on the Glenelg Plains, the Orders in Council erecting the province of South Australia were read, and the necessary oaths were taken by the Governor and others. In the open air a feast of cold things was made, loyal toasts were loyally received, and the National Anthem (according to the newspaper chronicle) "had more of grandeur in its simplicity than those who have only heard it in a theatre can conceive." The Governor proclaimed his intention to punish any wrong done to the natives, and invited all colonists to assist him, and prove themselves "worthy to be the founders of a great and free colony." But there was discord about the site. The Colonization Commissioners had given Colonel Light copious instructions, and had enjoined him to consult with the Governor, but they had left his judgment untrammelled in the last resort.

The Governor did not approve of Colonel Light's selection. He was requested to take the chair at a public meeting in February 1837. He was sufficiently discreet to decline. A meeting was nevertheless held on the 10th February, and Mr. T. B. Strangways moved that the site was not such as the colonists had been led to expect would be chosen. Dr. Wright, seconded by Deputy-Surveyor Kingston, moved that the Surveyor-General's choice was admirable on many grounds, and the votes on the subject were taken by representation of Land Orders. The Governor had 5 votes, Mr. Strangways 16, and Mr. Stephens, on behalf of the South Australian Company, had 110; but only six others could be collected to denounce Colonel Light's selection. On the other hand Mr. Morphett with 115; Mr. J. H. Fisher, the Commissioner, with 47; Mr. J. Brown, with 19; Mr. W. H. Neale, with 10; Mr. C. G. Everard, with 5; Mr. B. T. Finniss (Assistant-Surveyor) and others, mustered 218 land orders, and the Surveyor-General triumphed. It does not appear that he would have yielded if the result

had been different.[1] He pursued his labours, and in March 1837 the plan of the town was exhibited to the public. One thousand and forty acres were marked out. On the 23rd March the appropriation of the soil began; there were 437 preliminary claims to be satisfied. Those who had contributed the amount required to raise the first investment for founding the colony (having determined priority by lot), were allowed to choose their sections. On the 27th March 595 lots were sold by auction at prices ranging from about £3 to £13. The total result was £3594, and the holders of the 437 preliminary sections rejoiced at their good fortune in escaping competition. Houses were built of stone, of *pisé*, and of mud. Mr. Gouger, whose dwelling was of stone, described the Governor's as "of mud put between laths, supported by uprights of native wood, and covered thickly with thatch. . . You will smile when I tell you that in the plan, fire-places were forgotten; and that a simple fire-place and chimney has now been put down close to the front door. . . The architect was a sailor, and the workmen were the seamen of the 'Buffalo.'"

The sons of the Commissioner Fisher built a store of stone, and the inhabitants in the heyday of early hope were proud of their lot. Sir J. Jeffcott, on the 13th May, 1837, held a gaol delivery. The 'South Australian Gazette' boasted that the grand and petit juries "might in every respect challenge comparison" with those in England. The Judge announced that it had been his hope to see grand juries established although they did not exist in other Australian colonies, and that the Governor and his Council had agreed with him. He deplored that amongst the cases on the calendar were those of theft, by colonists, of a jacket and some weapons from the natives. He quoted Lord Glenelg's instructions that the natives should be humanely and justly treated.

[1] Judge Jeffcott was one of those who advocated a site at Encounter Bay. In December 1837 his own fate cast a gloom over that spot. He had embarked in a vessel sailing thence to Van Diemen's Land. She was wrecked. He joined others in a whale-boat to explore Lake Alexandrina, and being upset in the rollers was, with two others, drowned. Colonel Light himself died in 1839. His successor in office was Captain Frome, R.E., who won golden opinions by his active prosecution of the public surveying.

He declared that "the system hitherto adopted in the immediate neighbourhood of this province towards the native population is one at which humanity shudders." He promised to exercise his functions so as strictly to preserve the rights of the natives. He probably hardly dared to hope that his warning would check the deeds which an unobserved white man could perpetrate upon natives whose evidence it was impossible to receive. It was, however, a satisfaction to know that at a banquet given to Captain Hindmarsh in London, in 1835, he and others had expressed humane and manly feelings with regard to the aborigines. Captain Hindmarsh had serious differences with Mr. Fisher, the Commissioner whose responsibility to the Colonization Commissioners was supposed to exempt him from the Governor's control. Divided authority led to confusion. Fisher claimed to direct the proceedings of an emigration agent, but the Governor removed the agent, and appointed another.

Mr. Gouger quarrelled with Mr. O. Gilles, the treasurer. The Governor in opposition to Mr. Fisher and Mr. Mann (Advocate-General and Crown Solicitor), who were in his Council, suspended Gouger and removed Gilles from the commission of the peace, retaining him as treasurer. Mr. Mann himself was suspended by the Governor.

Captain Hindmarsh survived the unpopularity of some of his proceedings in the colony. On the anniversary of his assumption of office, a public dinner was given to commemorate it. The Judge, Mr. Gilles, and other leading men were there, but the irritated Fisher held aloof. Remonstrances against Hindmarsh had flown thickly to England. The Colonization Commissioners complained to Lord Glenelg, who at their request, in February 1838, recalled the Governor with expressions of regret that "circumstances had rendered unavoidable the dissolution of official relations with a gentleman whose claim to respect both on public and private grounds he should ever be ready to admit." But Mr. Fisher had not given satisfaction. The expenditure of funds in importing ponies from the Malay Archipelago and sundry other matters were objected to, and Mr. Fisher was removed without any expressions of regret. In selecting a new Governor, Lord Glenelg found a

gallant soldier. Colonel Gawler had been a volunteer in a storming party at Badajoz, and was, with his distinguished regiment (52nd), a forward actor when the banner of Napoleon was lowered in the dust before the genius of the Duke of Wellington.

At the date of Colonel Gawler's appointment, the English Commissioners continued to sell land in England, and to send instructions to the Commissioner in the colony. The sales effected up to December 1837, were thus announced:—

	ACRES	
437 land orders for 135 acres each, included in preliminary sales	58,995	£35,397 0 0
Land orders exclusive of the preliminary sales, 80 acres each, at 12*s.*	1,600	960 0 0
Ditto, at 20*s.*	3,200	3,200 0 0
Amount received by the Commissioner in the colony for sale by auction of sections not included in the 437 preliminary orders	563	3,594 0 0
	64,358	£43,151 0 0

The 437 preliminary selectors secured, besides their 437 town lots, 58,558 acres of rural lands.

But though the Commissioners sold land in England in small quantities they complained that their operations were injuriously affected by land regulations in the other Australian colonies. They besought that the price in them might be raised. Dwellers in other colonies resented interference at the instigation of their youngest-born sister. Another difficulty paralyzed the English Commissioners. Their arm was not strong enough to enforce, nor their eye keen enough to see, what was requisite for due discipline at the other end of the world. They felt their weakness, and it was arranged in England that the new Governor should combine the functions of Resident Commissioner with those of Governor. Thus it was thought some unison might be obtained between English and colonial administration, especially with regard to the public lands, some of which were sold in London, and some in Adelaide.

The scramble for allotments in Adelaide with the hope of enormous profits produced the results against which Gibbon Wakefield had always warned his friends. They did not deny

him honour, but they had not firmness to follow his advice. The South Australian Company, of which Mr. Angas was originator and chairman, plunged into the speculative vortex. He withdrew from the Colonization Commission as soon as he found it expedient to form the South Australian Company, and Lord Glenelg accepted his resignation with regret. The Company's capital was half a million sterling. A part of it Mr. Angas invested in land orders. The vacillation of the Commissioners afforded facilities. In June 1835 they had fixed their "uniform price" at £1 an acre for one year after Captain Hindmarsh's appointment. In accordance with the balancing principle of Wakefield's sufficient price, it was contemplated that then the price might be raised to £2. But in October 1835 they shrunk from their principles. To tempt purchasers they reduced the price to twelve shillings.[1] It was to be raised again to £1 after the Governor's arrival in the colony. They increased the area of rural lots from 80 to 134 acres. The South Australian Company resolved to speculate at once. They purchased land orders entitling them to about 14,000 acres; more than a hundred acres of which were amongst the 437 preliminary selections. When the subsequent sales by auction were held the Company's agents bought 66 lots, and thus became owners of 162 acres in Adelaide, and six at Port Adelaide. Gibbon Wakefield did not conceal his contempt for the "ignorant or careless" departure from his principles. The evils of inordinate acquisition of territory which he had denounced in Western Australia were on a small scale being repeated in a colony nominally founded upon his own theory. The operations of the Company were so far successful that on issuing a new series of shares they were able to demand a premium which defrayed all their preliminary expenses.[2] Their prospects were for a time to be clouded in the general gloom, but in their earliest days all was activity and hope. Their land purchases were but a part

[1] Evidence of Colonel Torrens before Select Committee (House of Commons) on disposal of lands in the British Colonies. 1836.

[2] Mr. G. F. Angas, the founder of the Company, after many years emigrated to the colony. A son had preceded him in 1843. Mr. Angas went thither in 1851. He shared in some of the reverses, but profited by the success of the colony. Enterprising and generous, he attained the age of 90 years, and died rich and respected in 1879.

of their scheme. They had a fleet of whaling vessels. They contemplated building warehouses and letting them; growing wool; laying out farms; establishing a bank; and making loans to the settlers. The rate of interest for loans in the colony was quoted in May 1838 at from 10 to 15 per cent. That of discount was 10 per cent. There was a small cloud visible even then in the official statement. The bank allowed 8 per cent. on deposits and charged 10. It was not seen that the allowance of so large a profit as 8 per cent. on deposits proved that private enterprise was paralyzed, and would sink rather than revive under the temptation thus offered to capitalists by the dead hand of the bank, which would be laid more heavily upon its customers in proportion as it might have to pay larger interest to depositors. Under such an artificial pressure wages were high. Labourers received from five to seven shillings a day; mechanics about fifty shillings. Such perverted notions of the dignity of labour prevailed that a labourer might be seen who scorned the idea that he depended upon his occupation. Mr. Gouger, who, like all other South Australian colonists, had exulted in the thought that no convicts could approach the sacred soil at Adelaide, was fain to employ ex-convict workmen immigrating from Van Diemen's Land. He told the tale himself.

"The object of the labourer seems to be to learn how little work and how short a day his master will put up with . . . the effects are really serious; and to such an extent did I find this go in my own case, that for several months prior to my leaving the colony I employed but one man . . . who came from England direct; all my men were from Van Diemen's Land, where they had been for some years, and I uniformly found them far better and more industrious labourers than any others I could obtain. I am grieved to be obliged to mention this fact."

Two fundamental principles of the new settlement were thus violated by Wakefield's disciples. A "sufficient price" had not even been honestly sought. They had trafficked in a forbidden manner. They had not secured a wholesome supply of labour for fitting enterprises, and the taint of the convict element had spread without remonstrance to the homestead of the chief civil officer under the Governor. Flocks and herds were gradually imported, but the price of meat was high. One shilling per pound in Adelaide tempted the graziers of New South Wales,

where less than a fourth of that sum was procurable. Sheep and cattle were despatched to the settlement. When Mr. Hawdon arrived in Adelaide from New South Wales with a large drove of cattle in April 1838, he was publicly entertained as a benefactor. One of his own oxen was roasted whole, and the chairman of the feast, Mr. J. H. Fisher, presented him in the name of the people of South Australia with a snuff-box. The importation of breeding stock would of course enable the new colony to supply itself with animal food after lapse of time, but meanwhile the settlers could expect no profit upon investments. They sought it by gambling in those allotments which it was the object of Wakefield's theory to guard from such a fate on the occupation of a new territory. Industry languished, labourers migrated from the land, and settlers, conceiving themselves deceived, were to be seen in the neighbouring colonies, inveighing against the delusive promises by which they had been lured to South Australia. They sought to buy land elsewhere, and denounced the "sufficient price" which they thought had been applied to South Australia, but to which neither Colonization Commissioners in England nor functionaries in the colony had resolution to adhere. The gambling rife in Adelaide proved that the proper price had not been maintained. There was no master mind to fix the course of the vessel, and if need be, by an almost prohibitory standard to compel the immigrants to seek the creation of homes by industry, rather than by speculation snatch at the means of making fortunes with which to flee back to the mother country. The energies of the settlers were eagerly devoted to the traffic which was forbidden by the charter of their existence. Half-hearted adhesion to Wakefield's theory had palsied its virtue. The consequences predicted by its author fell upon the settlement. Industrial employments being neglected, there was dearth of healthy products. Daily wants were not daily supplied. The local government shared in the general confusion. That something was amiss was felt, and Parliament passed an amending Act in July[1] 1838.[2] It authorized anticipa-

[1] 1 and 2 Vict. cap. 60.

[2] Among the new Commissioners under the Act were Colonel Torrens (chairman), the learned and polished Mr. J. G. S. Lefevre, who was afterwards for many years Clerk of the Parliaments in Westminster Palace;

tion of the revenue by means of borrowing powers conferred on the Colonization Commissioners; who stipulated that money borrowed from the land revenue should sooner or later be expended in immigration. The land fund became available for relief of the general exchequer. But, as unwise alienation of lands to speculators had thrown into private pockets the increment of value which ought to have accrued to the State, the public treasury did not receive the contemplated benefit.

Colonel Gawler left England in June 1838, and arrived at his destination in October, three months after his predecessor had quitted his post. He was generally responsible to the Government; but had special though undefined relations to the Commissioners, being himself their representative in the place of the discarded Fisher. He found (he said) capital flowing out "for the necessaries of life to Sydney and Van Diemen's Land; scarcely any settlers in the country; no tillage; very little sheep or cattle pasturing; the two landing-places of the most indifferent description; the population shut up in Adelaide, existing principally upon the unhealthy and uncertain profits of land-jobbing." He could obtain no statement of accounts from the Treasurer. "Almost all that I have been enabled to discover definitely of the finances of this period is, that the whole regulated expenditure for the year, £12,000, was drawn and expended in the first quarter." He was empowered to deviate from instructions in cases of urgent necessity. Cases of necessity crowded upon him. He constructed works which withdrew labour from the employments to which it was Wakefield's aim to devote it. He thus artificially enhanced the price of the labour left to the open market, and in the same degree increased the cost of the Government works. The Commissioners had authorized the building of wharves and

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Mr. W. Hutt; Mr. G. F. Angas, and others. Mr. Angas retired when he thought his position as a promoter of the South Australian Association required him to do so. Avocations connected with administration of the Poor Laws caused the retirement of Mr. Lefevre, and other changes were made from time to time. In 1839 the Colonial Office transformed the management. The former Board was dissolved, and three Commissioners, Messrs. Villiers, T. F. Elliot, and Colonel Torrens, were appointed, Mr. Elliot being chairman, and the functions of the Commissioners applying to all colonies requiring aid in the promotion of immigration.

offices at a total cost not exceeding £25,162. The revenue was estimated at about £20,000 per annum. The expenditure for the last quarter of the year 1839 was £34,000. This excess was enormously exaggerated in 1840. In that year £90,000 were already due to the Emigration Fund. At their wits' end the Commissioners laid their case before Lord John Russell, then Secretary of State. He determined to authorize the Commissioners to raise a loan of £120,000, and to institute a Parliamentary inquiry, pending which Colonel Gawler's outstanding bills were not accepted, and in December 1840 Colonel Gawler, who had previously applied for leave to resign unless his salary could be raised, was recalled for "having drawn bills in excess of the authority received from the Commissioners."[1] His successor walked into Government House in May 1841. Then only did Colonel Gawler know of his removal.

The departing Gawler was complimented for all his conduct except errors of judgment on "subjects of finance." When he left he bravely averred that he had authority for all the expenditure incurred, and that "unfortunate difficulties" had arisen from imperfect knowledge in England of the state of the colony. He pleaded necessity in undertaking public works for which others could not see the justification of incurring debt. His critics could not or would not see that they were themselves to blame in perverting the plan upon which the settlement was formed. The Commissioners acknowledged his high character and qualities, and the colonists warmly expressed their good will; but he left the colony plunged into debt exceeding

[1] Colonel Gawler had been supported in some of his difficulties. On the 23rd January, 1839, he complained of his Advocate-General and Crown Solicitor, whom he had suspended. He requested that he might "not be compelled to admit him into the Council." The offender (Charles Mann) was "the mover and leader of a party holding novel and speculative principles for which (Gawler) could discover no legal authority—was restless and inconsiderate in pressing them, and not sparing of personal insult" to the Governor. With the despatch was sent a memorandum, signed by the Colonial Secretary and by the Advocate-General whom Colonel Gawler had appointed, to the effect that Mann was notoriously one of the editors of a newspaper in which articles, contributed by Mann, assailed the Governor and disputed the validity of Acts passed in the Council. Colonel Torrens on behalf of the Commissioners advised the Marquis of Normandy that it would be necessary to confirm the suspension of Mann and to allow the Governor to appoint a successor.

(according to the Commissioners) more than nine hundredfold the limits of their instructions; and the pressing needs of the hour were only temporarily met by borrowing from the local bank, "because there were no purchasers for the continued large number of Government bills circulated."

Amidst the confusion and misery of the time there was something of that which statisticians call progress. All the immigrants could not flee away. Many arrived after healthy employment had been checked. Nearly 3000 persons arrived in 1840. The evil tidings of that year retarded others, and less than 800 arrived in 1841. There were 14,600 persons in the colony, however, in 1840. They were not happy, but they were increasing; and in the eyes of some political economists to multiply population and augment the items in statistical tables is the acme of perfection. Contentment and piety, which make human creatures happy on the earth and prepare them for happiness hereafter, are imponderable in tables of figures.

In one respect the tables were alarming. The expenditure for the Government of less than 15,000 persons was £171,000, while the revenue was only £30,000. One hundred and seventy thousand acres were sold in 1839. Three-fourths of the quantity were sold in the colony, the rest in England. The exhausted settlers bought only 15,000 acres in 1840. There were only 2500 acres in cultivation. Cattle had increased to 15,000, and sheep to 200,000. The imports were £303,000, the exports £32,000. Half of the last amount was staple produce, and more than half of that produce was wool. The imports were multifarious.

Proud of her freedom from the taint of direct importation of convicts the new colony had received them indirectly as labourers, whom Mr. Gouger preferred to the less diligent or capable immigrants from England. Superior skill in ministering to the peculiar wants of a community in its earliest stage was the possession of many of the freed convicts; and they were, in the work of splitting timber, fencing, and putting up rough, strong buildings, both with head and hand more useful than ordinary labourers.

In 1837 the little settlement bestirred itself to legislate. Its first Act (2nd January, 1837) provided for the establishment of

Quarter Sessions and Petty Sessions. The second fixed the qualification of jurors. Real estate of the value of £50, or personal property worth £100, was the only property qualification required. Both these Acts were allowed in England; but Acts for determining disputes between masters and servants and for regulating the sale of liquors were disallowed. A Supreme Court Act was passed in May 1837. A Juries' Act was passed in November 1837, after the accession of Queen Victoria. The knotty point of regulating the constitution of juries was shorn in the free colony of the odious concomitants which had vexed New South Wales and Van Diemen's Land. There was no mention of convicts or freedmen. The magistrates were to strike out of the lists the names of "persons not liable to serve, or disqualified from serving," but there was no interpretation of these words. Special jurors were to have £500 in value of real, or £1000 of personal property. Grand juries were to consist of not more than twenty-three nor less than thirteen, and were to be drawn from the lists of special jurors. Thus in providing for the jury of presentment South Australia at one bound arrived at liberties unknown in the older colonies; and on the 13th May, 1837, a grand jury was assembled. The recovery of small debts exercised the ingenuity of the Governor's Council in November 1837, and in February 1838 an Act to preserve harbours and regulate shipping was passed.

A Customs Act, and an Act to correct a clerical error in the same, concluded Captain Hindmarsh's legislative achievements, and when it is remembered that he lived in a tent before he was promoted to the mud hut described by Mr. Gouger; that he received deputations under gum-trees, that the Commissioner, under the Colonization Commissioners, disputed his powers, and the Surveyor-General was independent of him, it must be admitted that his difficulties deserved sympathy.

It was not until September 1839 that Colonel Gawler passed an Act enabling South Australia to deal with "convicts escaping from the neighbouring penal settlements." It empowered the local justices to endorse warrants issued by Judges in New South Wales or Van Diemen's Land, but did not deal with convicts whose sentences might have expired, and who might immigrate to South Australia.

In March 1840 South Australia had to legislate for her own convicts. The gaol was crowded, and it was enacted that prisoners might be employed upon the roads and on public works.

In August 1840 a Municipal Corporation was created in the young capital, and it was enacted that voters should possess property rated at not less than £20. None were to be enrolled who within two years prior to such enrolment had been "convicted of felony or of a misdemeanor followed by three months' imprisonment." The spectre of felonry had flitted to the new land with its first settlers, and the newly-fledged legislators had to confront a danger from which they had thought their territory would be free.[1] Colonel Gawler's efforts were disallowed in some cases. A Post Office Act, a Whale-fishery Act, an amending Jury Act, and others were disapproved. An Impounding Act was passed at an early date.

In the general legislation of the Australian colonies the pressing needs of pastoral communities may be read largely. The welfare of flocks roving over unenclosed space, and tended only by a shepherd who followed them to their natural feeding-ground and guided them nightly to the fold, was of the utmost importance. Carelessness might cause disease to spread. A lost sheep might stray from one run (or pasture) to another. The dreaded scourge known as "scab" might destroy the value of years of unremitting toil. It came, and was disseminated. In each colony it was met by legislation more and more stringent until it was controlled. A new disease called catarrh suddenly appeared. Thousands, tens of thousands of sheep, were swept away so rapidly that even their wool and skins were lost to the owner. There were not hands enough to save them. The disease was supposed to have originated in the table-lands of the cordillera. After wasting the substance of many flock-masters, it lost, like other endemics, some part of its virulence.

[1] One incident may be recorded as an instance of the abhorrence of the free class with respect to the convicted. A lady in Sydney was surprised at the refusal of an Australian-born nurse-girl to accompany her family to England. She thought the girl would have been delighted. "Oh! no, ma'am, I could not think of going there. That's where all the bad people, the prisoners, come from." The lady had not thought of that view of the question.

To its victims it was like the plague, and was the subject of frequent legislation. Long years elapsed before the use of dividing fences in some degree protected graziers from risk of unintended trespass. Cattle also ran at their will on open pastures. Better able than sheep to escape, or defend themselves and their young from the wild dog, they were merely visited on the run on which they were bred and to which they were attached. A class of men called stockmen grew up, knowing every hill and dale, and expert at riding after the wilder animals which resorted to the mountains. Periodically "musters" were made to ascertain the number of cattle on the run. Unbranded animals were caught and forcibly branded. Neighbouring stockmen assisted each other in mustering, and many a tale was told at night of the accidents by flood and field. These occurrences of every day life in the older colony were reproduced in South Australia by degrees, although the agricultural tendency of the settlers was about to give more marked predominance to the cultivation of crops than elsewhere.

Many years elapsed before a more enduring tenure by lease of pasture-lands from the Crown warranted the tenants to incur the expense of putting up boundary and other fences to separate their sheep, and economize the pasture which—no longer traversed by thousands of sheep going to and from their nightly fold—sustained a greater quantity of stock than had been possible under the original system. Constant and extensive use of strychnine in poisoning the native dogs was so successfully resorted to that the simple sheep were safe in their new unguarded condition.

It is not creditable to the sagacity of early colonists that a good law to regulate dividing fences was not provided. The want was sorely felt in after years. The only excuse which can be alleged is that in rural districts settlers established themselves in places remote from each other, and often with an intermediate space of forest land at a watershed dividing their respective lands. Thus, like their great fore-runners, Abraham and Lot, "they separated themselves the one from the other." But when the time came that the land was more thickly inhabited, strife again arose between herdsmen, and the want of a law was felt. Dwellers in lands where for ages properties have been divided

can hardly picture to themselves the condition of a new territory where the idle will do nothing to protect themselves from encroachment, or to derogate from the calculated advantage of trespassing on neighbours. Looking at the losses arising from the spread of infection and contagion, one may say that the absence of a good fencing law marks inadequacy of knowledge or power in the Legislature, and was pregnant with infinite trouble to settlers. The remedy for trespass was in impounding laws which, continually undergoing amendment, abound in the Acts of Australian Legislatures. Another evil pressed itself upon Governors and Councils. Remote from observation, a class of dishonest men with small homesteads preyed upon their neighbours' herds. Laws to regulate slaughtering of cattle recur in all early Australian legislation, whether by Governors or by Councils. No man could slaughter a beast for sale without holding a license from the Government, and heavy penalties enforced obedience. That South Australia, sharing in common wants, should seek similar remedies to those resorted to in New South Wales, was natural; and the laws of different settlements were often moulded in the same form. Ports and harbours, roads and bridges, alignment of streets, post office regulations, customs and excise duties, were subjects with which the two first Governors had to deal, but the manner of dealing with them in Adelaide requires no special comment.

Though Wakefield stoutly maintained that the devotion of proceeds from land sales to immigration was not of the essence of his system, but merely an accident of healthy nature, which could be added to it, if colonists and colonizers should desire to reproduce afar a type of the society of the mother-country, his disciples at a very early period gave prominence to the happy accident, and many of them came to look upon it as the prime feature of his system.[1] In choosing emigrants the Commissioners in England bestowed great care, and boasted of success. They entertained no application from persons who had received parochial

[1] In defiance of Wakefield's assertion that he would demand his "sufficient price" even though it were to be thrown into the sea, it is mortifying to find Mr. A. Forster, once a legislator in South Australia, declaring that Wakefield proposed the price in order to create a fund wherewith to import labourers. 'South Australia,' p. 46, by A. Forster. London: 1866.

relief. The immigrants were respectable, and the health of the inhabitants was good. Climate and soil were favourable. The inexorable wants of man or the blunders of his impatience were the only obstacles to progress. It was known in England that many emigrants had taken refuge in New South Wales and Van Diemen's Land, descanting upon the troubles they had fled from, and the certainty that South Australia would be abandoned. The inquiry in Parliament and the character of the new Governor were to be the solvents of the problem. The materials for the inquiry were condensed in a paper drawn up for the Lords of the Treasury in October 1840. The funds which ought to have been kept separately had been inextricably complicated. The Revenue Fund was largely indebted to the Emigration Fund, but the amount could only be stated as £125,340 8*s.* 10*d.*, "supposed to be due." The Government meantime gave a guarantee for a proposed new loan of £120,000, to avert further distress until Parliament could consider the question. The money raised was to be expended on "the specific authority" of the Lords of the Treasury. But the money could not be raised. After two months' negotiations with the Bank of England and elsewhere, Colonel Torrens reported failure, and the Treasury, on the 15th January, 1841, suggested that all "parties should be informed that the case would be brought before Parliament without delay." South Australia was bankrupt. The second Australian colony founded without convict labour had failed. If Gibbon Wakefield's "sufficient price" had been tested, or even aimed at, it might have been said that it also had failed. But it had not been tried. The half-hearted attempt of fixing the price at one pound an acre had neither concentrated labour nor prevented the dissipation of capital.

The Governor sent by Lord John Russell to educe order from the social and financial chaos at Adelaide was Captain George Grey, whose explorations in Western Australia have been recorded.

He was well known to literary men. He was engaged in preparing an account of his travels, when the post of Governor of South Australia was offered to him. He left the revision of his work in the hands of friends, and sailed without delay to Adelaide, bearing the first tidings of his appointment.

The narrative of discovery and settlement with which it has seemed convenient to open the page of history during the successive careers of the Governors of New South Wales, has unavoidably led in the cases of Port Phillip and South Australia to following the thread of events in the latter beyond the mere settlement in 1836. The troubled period during which Captain Hindmarsh and Colonel Gawler struggled in vain with their difficulties fitly forms one episode. It was also desirable to show that at the period of Captain Grey's appointment the English flag waved in undisputed supremacy over the whole of Australia and New Zealand. Sir Gordon Bremer had not only established a military post at Port Essington in 1838. He had formally annexed Cape York as a place in possession. East, West, North, and South Australia, were held by England while Lord Glenelg was Secretary of State, and in 1839 Lord Normanby despatched Captain Hobson to contract a treaty with the Maoris, so that their land also might be brought under the sovereignty of the Queen. He succeeded on the 6th February 1840, and from the 10th to the 47th degree of South Latitude, from the 112th to the 185th degree of East Longitude, all the lands and islands of Australia and New Zealand were formally declared to be under the sway of the young Queen enthroned in the Island of the West.

It is necessary now to resume the narrative of General Bourke's government. He met his Legislative Council for the first time on the 19th January, 1832. He requested them to pass a Bill regulating the constitution of juries, and "the trial of issues in certain cases" in the Supreme Court. A larger measure for extension of juries would have been proposed, but that the want of Circuit Courts prevented it. He hoped that the Crown would at an early date, by an Order in Council, institute Circuit Courts, and he would then propose a Bill to extend the jury system. He introduced a welcome innovation by promising to lay estimates of expenditure before them. The new system of disposing of land by auction under Lord Goderich's instructions would be put in force as soon as practicable after survey. Minor measures with regard to debtors, fraudulent weights, and savings banks, occupied the remainder of his speech.

On John Macarthur's[1] motion various returns respecting jury lists were obtained. One of them contained the "number and names of emancipists, or other persons who have become free by servitude, who have been admitted into the special jury list as legally qualified jurors."

The old grievance still rankled in men's minds. The Governor, however, passed his Bill. It declared not qualified—"every man who hath been or shall be attainted of any treason or felony, or convicted of any crime that is infamous (unless he shall have received for such crime a pardon, or the full period shall have expired, for which he shall have been sentenced to be transported), and every man of bad fame, or of dishonest life or conduct, or of immoral character or repute." It also disqualified twice-convicted persons. The property qualification was £30 annual value of real, or £300 in full of personal, property. The lists were to be revised by the magistrates. Special jurors were persons described as "esquire or merchant (not keeping a retail shop) or Bank Director."

The final result of Bourke's labours in the matter may here be stated. The Act of 1832 left all criminal issues to the old military juries of seven commissioned officers created by the Constitution Act of 1828. Wentworth and his friends demanded further liberties. In 1833 Sir Richard Bourke introduced a Bill which, though it did not satisfy all, effected great change. It was read a second time on the 24th July, and the Council asked for explanatory papers. Without a division (on the 6th August) they asked the Governor to apply for the opinion of the Judges, "as to whether a person who has been convicted of a felony or transportable offence, and whose sentence has expired, or been remitted by an absolute or conditional pardon, is legally qualified to sit upon a jury in England."

The Bench had been recently strengthened by the accession of William Westbrooke Burton,[2] an upright Judge, an honour-

[1] This was one of the latest of John Macarthur's public acts. His son John died in England in 1831, and the father's "tempest-shattered bark," as he had called it in 1817, thus received its final shock. He disappeared from public life, and died in April 1834.

[2] Sir W. W. Burton entered the Navy in 1808, in H.M.S. 'Conqueror.' He did good service in boats off Toulon in 1811, and served at New Orleans. After the peace he studied law, and held his first brief in Westminster the

able and true man, and an earnest Christian, brave under all circumstances, because always supported by a good conscience. No man's character stood higher than his. No breath of aspersion against him could do otherwise than damage the reputation of the asperser. The opinion was promptly and collectively given. In the large majority of cases included in the question emancipists would be holden qualified in England under existing statutes. The exceptions were persons convicted of perjury (under a statute of Elizabeth), who could only be restored by statutory provision; persons convicted of transportable offences in law accounted infamous, and not having received a free pardon; persons convicted of other infamous offences, such as conspiracy to accuse another of a capital offence, or of any other species of the *crimen falsi*. The Governor found it difficult to pass his measure, although aided by Chief Justice Forbes. He was constrained to leave it optional for the persons arraigned to select trial by a jury of twelve civilians, or by the military jury created by the Constitution Act. The disqualifications of persons attainted or convicted, were limited to those who had not received a free pardon, or were not "within the benefit and protection of some Act of Parliament, having the force and effect of a pardon under the Great Seal," and those who after expiration or remission of sentence had been "convicted of any treason, felony, or other infamous offence." The Governor's Council contained six official members besides himself, and there were seven unofficial members. Yet he carried his Bill only by exercising a vote and a casting vote, which under the 23rd section of the Act 9 Geo. IV. cap. 83, was within his function. Seven votes given by six persons were recorded for the Bill, and six against it. The record does not give the names, but they can be determined. The Archdeacon, official member, was absent. Robert Campbell, unofficial, was absent. The six dissentients were, therefore, Alexander Berry, Richard Jones, John Blaxland,

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day after he was called. He joined the Midland Circuit. Being offered an appointment as Judge of the Supreme Court at the Cape of Good Hope he went to Holland to study Dutch and Roman Dutch law before entering upon his duties, in which he notably distinguished himself. Early in 1833 he was on the Bench in New South Wales. Afterwards he went to Madras as Judge, and returned to New South Wales in 1857 after retirement from judicial duties.

Edward Charles Close, Hannibal Hawkins Macarthur, and Archibald Bell. There was not one of them who was not held in high repute, and they had all been appointed by the Crown, on the recommendation of Governors; yet so strong was the feeling against breaking down any barrier between the free and the bond, that they resisted to the uttermost a Governor whom they all respected. A curious commentary on the Act is furnished by the large number of cases in which persons criminally charged preferred military to civil juries.

In the Supreme Court, in 1835, and in a part of 1836, there were tried by civil juries 346 persons. Before military juries in the same period, there were tried 217. In the Quarter Session Courts military juries were still more popular. In 1833 and 1834 they tried 604 persons, while civil juries were only asked for by 273. Yet the percentage of convictions by military juries was greater than that by civil juries. In 1835 civil juries were preferred in 304 cases, military in 254, in the Quarter Sessions. In that year the percentage of convictions was in both cases 50 per cent. of those tried. In no case did the proportion of convictions approach that prevalent in the United Kingdom. For a time at least the thorny question was set at rest.

In 1836 the Governor determined to strengthen his position by procuring opinions in favour of the working of his Act, from the Judges, and from the Attorney, and from the Solicitor-General. Forbes, as might have been predicted, entirely praised it, and thought trial by jury had been deferred too long. Judge Dowling briefly gave more qualified praise. Judge Burton contributed a careful paper. He pointed out that the framing of the Act implied distrust of civil juries, by leaving a military jury to the option of the accused. That distrust was shared in the community, and arose, he thought, "from the circumstance, that very low and disreputable persons are qualified, and liable to serve on juries, according to colonial law, and that the juries actually empanelled are frequently chiefly formed of such persons." In one case out of a panel of twenty-six, no less than ten jurors had been convicts, and three of them were publicans, many of which latter class became jurors. Out of a total list of 953 in the county of Cumberland, 203 were publicans. The

Judge did not advocate abolition of civil juries, but greater care in the mode of constructing them. There were abundant materials in the colony without including the disreputable elements which made it painful for decent people to sit upon juries under existing circumstances. Messrs. Kinchela and Plunkett (the Attorney and Solicitor) suggested more circumspection in empanelling juries, but commended the working of the Act. Judge Burton had in 1835 read a charge at the close of a session which thrilled through the public mind. There being no grand jury, he addressed a petty one. The facts would surely justify him. In 1833, 1834, 1835, there had been respectively, 135, 148, and 116 capital convictions, although recent legislation had removed the penalty of death from forgery, cattle-stealing, and stealing from a dwelling-house above the value of £5.

To one who could look down upon the community it would appear as if the "main business of us all were the commission of crime and the punishment of it." The polar star of religious principle was wanting. He blamed no individual, but there was a deficiency of means for religious instruction. When he had visited Norfolk Island one man placed before him for sentence said, "in a manner which drew tears from his eyes, and wrung his heart when he was placed before him for sentence—'Let a man be what he will when he comes here, he is soon as bad as the rest; a man's heart is taken from him, and there is given him the heart of a beast.'"

Masters of assigned servants were not sufficiently attentive to the morals of their men. Some permitted the Sunday to be spent in drunkenness and debauchery. The brave Judge was blamed by many for his exposure of crying evils. But he was respected by all. The words in which he described the convict road-parties—as "establishments like beehives, the inhabitants busily pouring in and out—but with this difference, the one work by day, the other by night; the one goes forth to industry, the other to plunder"—were at once engraven on all memories, and largely contributed to abolish the evil they depicted.

It may be well to trace the jury question to its settlement. The provisions of the Act of 1833 were periodically renewed by Sir Richard Bourke, who, when inviting his Council to re-enact them in 1836, hoped ere long to see "the Institution" established

on "its ancient English foundation." Definitive instructions from England were still required. In 1837 delay in amending the Constitution Act postponed the settlement for which the Governor longed, and which he was not destined to effect. In 1839 Parliament received favourably a provision by which, in a Bill to continue the New South Wales Constitution, the Colonial Legislatures where empowered to deal with the questions of Courts and juries. Before the new statute arrived in the the colony Gipps took up the subject and swept away the last relic of the military juries, which from the days of Governor Phillip had constituted the Criminal Courts,—wholly until 1833, and partially afterwards. The preamble of the Act of 1839 (3 Victoria, No. 11) cited an Order in Council (of June 1830) authorizing Governors "to extend and apply the form and manner of proceeding by grand and petit juries," and enacted that whereas the population had greatly increased, and there was "a sufficient number of respectable persons qualified to act as jurors to be found in all parts of the colony where juries are required," it was "deemed expedient that the trial of offences by a jury of seven commissioned officers should in future be dispensed with, and that all crimes, misdemeanors, and offences cognizable in the Supreme Court . . . and prosecuted by information in the name of Her Majesty's Attorney-General, or other person duly appointed for such purpose by the Governor, . . . and all issues of fact joined on every such information, shall be tried by a jury of the inhabitants of the said colony only." In the Supreme Court and in the Quarter Sessions, after the 31st October, 1839, military juries were to "cease and determine."

But the inhabitants did not thus obtain the "ancient English foundation" of trial by jury. Grand juries were not revived. It was not for them that Wentworth had harangued, nor for them that Governor Bourke had striven. The popular outcry had been for civil petty juries, and it was appeased without regard for the principle involved in those primordial juries which in England have so often barred the path of tyranny. In a departmental sense it was convenient for the Government to determine upon prosecutions by means of its officers; and if it appreciated the value of grand juries as safeguards for liberty it was only with a resolution to stifle them. In breaking the last

link which bound the fabric of society to the iron days of old, the framers of Australian law were not careful to compact the new order of things after the model of England, where juries, great and small, not only prevent wrong, but spread throughout the land a knowledge of justice and right, which is immeasurably useful in enlightening and strengthening that public opinion which for good or ill must mould the destinies of the people.

In the year 1834 a grave subject was dealt with by Governor Bourke. The question of usury, which Colonel Arthur had summarily dealt with in 1830 in Hobart Town, was troublesome in Sydney. In May 1834 the Governor laid before his Council a Bill to remove doubts. Judge Burton promptly wrote to him. Under the Constitution Act (9 Geo. IV. cap. 83), though the Judges no longer had the power formerly exercised by Forbes of vetoing a Bill by refusing to certify it, they or any of them could (sec. 22) represent its repugnancy to law, charter, or letters patent, or Order in Council, and such representation the Governor was bound to lay before his Council, the Bill in question being meanwhile suspended. Judge Burton found the Usury Bill repugnant to a statute of Anne as well as to the Constitution Act, and gave his reasons to the Governor. Out of courtesy he gave them before the Bill had been dealt with, and his letter was laid before the Council, where a Committee on the Interest Bill was forthwith appointed. The tyrannous manner in which money-lenders grasped the small freeholds of their debtors excited indignation in the breast of the Judge. At that date the majority of transactions were effected at a rate of ten per cent., but fifteen and twenty per cent. were not uncommon, and even thirty per cent. was found registered at the Supreme Court. Five per cent. was the maximum allowed by the statute of Anne. At that date an appeal to the Court in Banco was pending on a point reserved by Judge Burton—whether the English usury law was in force in the colony. The only colonial law, or presumed law, was found in one of the numerous Orders of Governor King, dated in July 1804, which, under heavy penalties for breach of it, prescribed eight per cent. as the maximum. Usage had sanctioned wide departure from that Order. The Chief Justice and Judge Dowling differed from Judge Burton as to the applicability of the statute of Anne. Forbes admitted the absence of legal

standard which the neutralizing of that statute would cause, but saw "no reason why Judges and juries should not continue to apply the same consideration to all cases of this kind as they have done heretofore, and to give such interest by way of damages as they think reasonable and according to the usage of the place." He concluded an elaborate judgment (8th June, 1834) thus: "I must repeat my regret at being compelled to differ from my brother Burton, for whose opinion in this case I entertain so much respect that to dissent from his judgment is to raise a doubt of the correctness of my own. I fully appreciate the value of the researches he has made and the alarming facts he has brought to light. He has, I think, established a sufficient case to call for the interference of the Legislature." But though two Judges over-ruled Burton in the Court, the possibility that their own decision might be reversed on appeal to England was alarming. Forbes was chairman of the committee on the Interest Bill, and witness after witness declared that a reversal would entail terrible consequences upon the community. Dr. Wardell and William C. Wentworth, solicitors, bankers, and merchants, agreed. One lawyer said "it would ruin the colony." It certainly would have confused the money market. Out of 567 transactions registered in seven years, only two were within the limit of the statute of Anne, and 530 largely violated it. The Council lost little time in recommending the adoption in New South Wales of the remedy applied four years previously in Van Diemen's Land. It was enacted that the English usury laws should be deemed not to extend to the colony, and that in all cases in which the parties had not previously agreed upon a rate the Court should not allow the recovery of a larger rate than eight per cent.

With the position of the question of trial by jury Wentworth and his friends were comparatively content. Governor Bourke's well-known predilections assured them that the technical restraints upon its extension would cease as soon as the necessary orders could be obtained from England. But the appetite of Wentworth for reform grew by what it fed on. He did not coarsely assail Governor Bourke, but he demanded for his countrymen control of taxation and expenditure.

At a meeting convened in 1833 to consider the propriety of

petitioning for representative institutions, Mr. James Macarthur (of Camden) pointed out (when a petition prepared beforehand was produced), that the question of the propriety of petitioning was the declared object of the meeting. The sheriff who presided incurred the wrath of Wentworth for giving an opinion on a point of order. "We are assembled here, a meeting of free British subjects, to speak our free thoughts, and I will neither be curbed myself nor suffer any friend of mine to be curbed by you. You are the mere shadow of the meeting." Such language addressed to a partial auditory could not be gainsaid by a formal functionary. Wentworth enjoyed his rude triumph, and harangued about taxation by representatives. The unpaid nominee members in the Legislative Council were miserable subservient creatures. He pitied them from his heart. No more degrading proposition could be made to him than that he should become one of so contemptible a body. A solitary instance of honesty was (he admitted) given by Blaxland's protest against Mr. Macleay's pension. In like contemptuous style he touched upon the whole budget. "Is there," he asked, "one among you so base as quietly to succumb to so intolerable a form of government? I say to you, demand the rights the common law gives you, but which an iniquitous Parliament, an unreformed Parliament, has for forty-five years withheld from you." No thought of the grotesque absurdity of giving representative institutions to Phillip's subjects in 1788 restrained the thunders of applause which sustained the people's champion.

The petitions to King and Commons were carried by acclamation. At another meeting called to petition the Governor and Council in the same year, Wentworth carried a proposition that the unwilling sheriff should vacate the chair, and that one of his own associates, Sir John Jamieson, should take it. Establishments and pensions were vehemently denounced, and the Governor and Council were entreated to revise their estimates. As Bourke by various means courted the good opinion of many of Wentworth's supporters, it cannot be concluded that the petition was intended to harass the Governor, nor did he allow it to do so. In June 1834 his financial minute said that the Council could render no more gratifying service to the Government than by considering the subject of reductions, which he

had himself not seen a way to make. He made Wentworth a magistrate, and a visit he made to his grounds was the subject of remark amongst the hotter minds of the Opposition to Bourke's policy. One of the objects of denunciation had been the sum set down as pension to Mr. Macleay, the Colonial Secretary, for former services. It was of no avail that some more moderate men remonstrated against the violence of the attacks on Macleay. Mr. Blaxland, whose protests were said to be drawn up for him by others, year by year repeated his opposition. Lord Bathurst, when persuading Macleay to go to the colony to assist in raising its tone, fixed the manner of his remuneration. His appointment as Colonial Secretary precluded his continuing to receive a pension of £750 for past services. His new salary was to be £2000 a year, and it was desired to keep up the payment to him of an amount equal to that of the pension which, while paid for active service, he could no longer receive.

Lord Bathurst hit upon the clumsy device that Macleay should forego the fees attached to his office (Despatch, 4th August, 1825), and that they should "form a source from which the additional allowance to Mr. Macleay in lieu of his pension may at least to a certain extent be drawn." Any deficiency was to be made good from any fund at the Governor's disposal. Any surplus of fees was to go to the public credit. Against this arrangement Wentworth ever launched his fiercest invectives, and Blaxland recorded his protests. In 1834 Bourke declared in the Legislative Council, that it was not possible to discontinue the payment, but that the Secretary of State had directed the charge to be transferred from the Colonial ordinary revenue to that derived from the droits of the Crown. A charge of £500 for paying Mr. Busby the resident at New Zealand, which had been similarly objected to, he saw no reason to dispense with. Forthwith Wentworth stirred up his myrmidons. The sheriff was requested to convene a meeting to consider the propriety of addressing the House of Commons on "the intended misappropriation of the proceeds of the sale of waste lands under the assumed denomination of droits of the Crown, and to remonstrate against the estimates as promulgated," &c. The sheriff, warned by his extrusion from the chair

in the previous year, replied that as his services had been formerly rejected, he declined to be the instrument for convening the intended meeting. Wentworth's followers called upon him to convene it. He, nothing loth, called, presided at, and harangued it. The droits of the Crown were part of the revenue which the Council ought to control. What raised the revenue but their industry? They had the worst of evils, taxation without distribution. "What were they then but a conquered, an abject, and a degraded people? And such they would continue to be, and as such still deserve to be treated, unless by a strenuous and successful effort they strangled in its infancy the infamous measure in contemplation." He moved a resolution—that the land fund was "part of the public revenue," which—with others denouncing the proposed appropriation as illegal, and adopting a petition to the House of Commons—was carried by acclamation. In 1835 Macleay thought it necessary by a protest in the Council to object to the manner in which Bourke caused his salary to be set down in the estimates, because the "whole sum which I receive was expressly stipulated before my embarkation to be paid me for my services as Secretary of the Colony, and I refused to leave England on any other terms."

A Patriotic Association, of which Wentworth's ability made him the moving spirit, recommended reforms to the English Parliament. Dr. Bland, and others of less notoriety, took an active part in propounding new theories of government; and the strong sense of Wentworth must have recoiled from some of the crude projects put forward. Money was subscribed to meet expenses incurred in pressing them before Parliament, and Mr. Henry Lytton Bulwer, then an ardent innovator, was chosen as champion. Sir James Mackintosh, to whom Wentworth had dedicated the third edition of his work on New South Wales, was dead, but Sir William Molesworth, C. Buller, and others, became patrons of the reforming party in the colony. As the time drew on towards the expiry of the Act 9 Geo. IV. cap. 83, under which the colony was governed, the two parties in the colony marshalled their forces. With Wentworth were all the patriots who were not, on grounds sufficient to themselves, arrayed on the other side; but with him were also the dregs of the freed population, and their alliance caused the hostility to

Wentworth's views, which as a rule the gentry of the colony then displayed. The latter class with many others adopted petitions to the King and to Parliament. They are set forth at length in a work published by James Macarthur, together with the celebrated charge delivered by Judge Burton at the close of the Supreme Court Sessions in Sydney in 1835, which displayed in hideous hues the condition of the criminal class, and the need of education and religion to humanize the increasing population, in which crime was gathering strength. The provisions of the jury law were dwelt upon in the petitions. It was urged that persons who had undergone sentence of transportation ought not to be placed upon a footing with magistrates and colonists of the highest respectability. The Act 9 Geo. IV. cap. 83, had dealt with the jury question, and new legislation could not but affect it, actively, by dealing with it, or passively, by leaving it to the local legislature. It was urged that the Land Fund ought to be wholly devoted to immigration; that the power of the Governor to remove magistrates was too arbitrary, that Judges ought not to be removable at pleasure, that the Chief Justice ought not to be a legislator, and that property ought not to be the sole standard of fitness for the elective franchise in a land where wealth was rapidly acquired by freedmen. The question of the validity of titles to land; the marriage law; the continuance or otherwise of transportation; and the mode in which, if it were discontinued suddenly, the colony might be affected, formed the subjects of lengthy petitions signed by the bulk of the intelligence of the colony. While yet many of that generation are living this fact is remembered, but in a few years the recorded names will be but unknown quantities, the value of which only deep research could ascertain; but it was as representative in the colony as would be a petition in England signed by all members of both Houses of Parliament. One prayer was for inquiry into the affairs of the colony. Wentworth and his friends were aroused to oppose the petitioners, who had styled themselves "Members of Council, magistrates, clergy, landholders, merchants, and other free inhabitants of New South Wales." In the allusions to the Governor's power they saw a sneer at Bourke. They denied the increase of crime, they repelled the idea that in the constitution of juries New South

Wales ought to be exceptionally treated. There were some points on which they could not take issue, but they defended Bourke as "wise, disinterested, liberal, just, paternal, and constitutional." They made insinuations against the framers of the petition. A counter-petition purporting to be from the "free inhabitants of the colony" was adopted, but its significance was weakened by the fact that it was supported by the emancipist party, and that in the petition which it opposed the free and the intelligent inhabitants and landholders were thoroughly represented. The second petition asked for representative institutions as a cure for all evils. Mr. James Macarthur, about to visit England, took charge of the petitions which he supported. He embodied them in a book published in England in 1837.[1]

Wentworth committed the counter-petition to the care of ardent friends who were irritated by delays. Lord Glenelg pleaded that the demise of the Crown, and a pending inquiry upon transportation, rendered immediate legislation difficult and undesirable. The statute 9 Geo. IV. cap. 83, was renewed year by year, but in the continuing Act of 1839 a clause was inserted giving the colonial legislatures complete power to deal with the constitution of Courts and of juries. In 1840 further provisions accompanied the continuance, but they related only to the erection "into a separate colony or colonies any islands which now are or which hereafter may be comprised within and be dependencies of the said colony of New South Wales." Wentworth's friends fumed at the delay. In 1838 Sir William Molesworth moved an address to declare, with all deference to the "constitutional prerogatives of the Crown, that Her Majesty's present Secretary of State for the Colonies (Glenelg), does not enjoy the confidence of this House or of the country."

He severed himself emphatically from those who would cut the colonies adrift, but he sympathized with "a people struggling for their just rights." He was not blind to the "possible result of carrying" his motion, but it would be "merely incidental." It was not his object. As a member of a Select Committee on transportation appointed in 1837, and revived in 1838, he had become acquainted with horrors which were "national

[1] 'New South Wales; its present state and future prospects.' London: D. Walther, 42 Piccadilly.

infamy." Economical affairs were mismanaged by the supine or incapable Minister who lazily postponed from year to year the urgent question of constitutional reform in New South Wales. But in March 1838 Canada was the colony which was in most men's minds. Lord Gosford and Sir Francis Head had laid rebellion low, and Lord Durham had gone thither to negotiate with the discomfited rebels, and restore constitutional order. Sir W. Molesworth was fain to withdraw his motion, and an amendment, moved by one of Sir Robert Peel's friends, imputing the Canadian embroilment to the misconduct of the Ministry, was defeated by 316 votes against 287. The names of Peel, Stanley, and Gladstone figured in the debate.

Meanwhile the Patriotic Association corresponded with Mr. Charles Buller, who had become their parliamentary advocate when Henry Bulwer (on appointment as ambassador at Constantinople) ceased to perform his functions as agent for the colonial Association, which had been originally formed upon a hint from him to Sir John Jamieson. Ability the Association doubtless contained. The name of Wentworth was sufficient guarantee. But the respectability of the colony was outside its borders. The hot-tempered Dr. Bland was its committee of correspondence, and plied his pen with vigour, subject to correction by the strong sense of Wentworth.

The position of the transportation question is closely connected with immigration, and the expenditure on police and gaols. It requires nevertheless separate mention. The manner in which convicts were disposed of by Governors in the thirty years which succeeded the foundation of New South Wales has been necessarily woven with the narrative of the early struggles of the colony. Most of the convicts were distributed by assignment throughout the homes and farms of the settlers. Summary justice, and sometimes injustice, was administered. Cruel cases occurred in which sordid masters by provoking quarrels with assigned servants caused them to be punished. Punishment postponed the period at which the convict could obtain a ticket-of-leave and work for wages, and if the scoundrel-master could succeed in his scheme he hoped to derive profit. He sometimes suffered. Men previously peaceful have been goaded by such tyranny to become bushrangers. In

one case known to the author the enraged servant murdered his master. Many true and some untrue tales were told of the hardships endured by the prisoner-population. Scourgers were stationed throughout the country districts, and a single magistrate had power to order the flogging of an assigned servant sent to him by a neighbour. In one instance when the offender was the bearer of a letter requesting that he might be punished, the domestic servant who handed to him his master's letter warned him that she had overheard its contents. The man encountered a shepherd near the magistrate's house, and affecting lameness, begged the shepherd, a convict, to save him the rest of the journey. The deputy bore the missive safely, and without being allowed to say a word was ordered to be, and was, flogged. Such a result had not been anticipated by the halting messenger, and it caused commotion among the not too sensitive residents. A money payment consoled the man who had received the punishment intended for another, and the matter was hushed up. These and other disgraceful concomitants of the convict system gradually became impossible. Regular courts of petty sessions were established throughout the territory. The powers of single magistrates were restricted. Proper records were kept of the proceedings at petty sessions, and under the mild *régime* of Sir Richard Bourke, it was known that no convict need anticipate harsh treatment under sanction of the Government. But in the road-gangs, where hardened criminals were worked in chains on the public works, it was known that crimes were rife at which humanity shuddered. They were nests of all conceivable and unmentionable atrocities. Norfolk Island was the plague-spot where all vile elements accumulated. It became the scene of a determined conspiracy in 1834. To that island prison no vessel was permitted to approach except after exchange of private signals previously concerted. Yet even amongst the convicts rumours occasionally ran. The mild rule of Bourke was supposed to stir aspirations of convicts, and to make them resentful of control. No ruler can be popular with a gang of hardened criminals, and Colonel Morrissett, the Commandant, had no exceptional qualities to command respect. A mutiny was planned. The island was to be seized, and a vessel was to carry the convicts to other shores. A man who had been

commander in H.M. navy, and transported to Sydney, whence he was re-transported to Norfolk Island for forgery, was to command the ship. He had often betrayed his fellow-convicts, but his manners pleased them, and they required his knowledge of navigation. The authorities were warned of the plot. The prime plotter was suspected to be the informer.

The danger was imminent. The total guard of soldiers was 120. The prisoners guarded were 750. Several posts were seized; irons were removed, and prisoners were released by the mutineers. The hospital was taken. The guard appointed to escort to their work the most desperate convicts was attacked. Some soldiers were thrown down and muskets were wrested from them. But though surprised they were not confounded. Extricating themselves promptly, the guard fired upon their fettered foes, killed some, and wounded others. The Commandant and other officers rushed to the scene and the mutiny was quelled. Sir Richard Bourke induced Major Joseph Anderson of the 50th Regiment to go to the island as Commandant. He was an old Peninsular warrior, to whom nothing was so displeasing as failure in duty. He found one hundred and thirty prisoners confined as mutineers. The upright and humane Judge Burton was deputed to try them at the island. He sailed in H.M.S. 'Alligator,' and arrived in July 1834. Fifty-five were selected as ringleaders. Eighty-seven witnesses were examined. The awful revelations of crime appalled the Judge. Festering in depths which combined the horrors of many circles of Dante's 'Inferno,' crimes abounded which no pen would dare to tell. The Judge shuddered when he found that in those *male bolge* no religious warning or consolation could reach his unhappy fellow-creatures. Then it was that he heard a prisoner at the bar declare that the place was "a hell upon earth," and that whatsoever a man might be when he arrived, his "man's heart was taken from him and there was given to him the heart of a beast." [1]

"To my mind," he wrote, "the picture of the place was of a cage full of unclean birds, full of crimes against God and man,

[1] 'The State of Religion and Education in New South Wales,' by William Westbrooke Burton, one of the Judges of the Supreme Court of that Colony. London: 1840.

murders, and blasphemies, and all uncleanness." The law required sentence to be passed by the Judge, but the man recoiled from the awful thought that such forlorn creatures should be hurried into eternity without a word which could waken penitence or afford consolation. He reprieved the whole of the convicts "until he should have an opportunity to lay their case before the Governor, and to obtain for those who should suffer the last penalty of the law at least that religious consolation and assistance they so much needed."

One honourable record the Judge hopefully made. Major Anderson was admirably qualified for his post—"just, prudent, fearless, and merciful, setting an example of propriety in religious and moral observances in his own person and family, and exacting it from others." The Judge was not blind to the dangers of the Commandant's position. He pointed out that he had power to order the most desperate convicts to be executed, and asked Major Anderson whether he thought it imperative that the power should be exercised while the frigate was on the spot. If the Commandant had no misgivings the Judge would prefer to bring the proceedings before the Governor rather than carry out the sentences forthwith. The gallant soldier was quite prepared to take the risk. The Judge sailed to Sydney.

A second mutiny was planned immediately after the departure of the frigate, but informers revealed it. The Commandant questioned the informers, and to lull suspicion remitted them to the companionship of their fellows. Fifty of the prime movers were arrested in separate batches, and, heavily ironed, lodged in gaol. The precautions taken were successful.

The hangman arrived with the ministers of religion who were to attend the criminals. The Rev. Mr. Stiles of the Church of England, and the Rev. W. B. Ullathorne, a Roman Catholic, performed the sad duty. Seven convicts were hanged on one day, and six on the following. All the prisoner-population was drawn out to observe the condign punishment of their associates in crime. The Commandant relaxed official rigidity in one respect. He allowed the victims to be hanged in clean, white dresses, instead of their convict garb. Stern in duty he was kind in heart. There had been under Morrissett's rule a remnant of the decorum of the days of Governor Phillip. The convicts were

assembled to hear prayers publicly, sometimes hastily, read by an officer. Anderson discovered amongst his subjects two prisoners educated respectively for the ministry, in the Churches of England and Rome. He astounded them by proposing that they should be themselves "placed in a position fit and encouraging for repentance," and do what they could for the good of their fellows. He gave them separate lodgings, appointed a servant to wait on them, and roused in them a sense of respect and responsibility. James Backhouse and G. W. Walker, Quakers, visited the island in 1835, and described these singular congregations. Each minister, thus created by the Commandant, uncompromisingly denounced sin, and descanted on the hopes afforded by the gospel. One of them, the Englishman, honestly acknowledged "his own want of conformity to what he so strongly urged as necessary for himself and others." To both congregations the Quaker gave exhortations at the close of the services. Backhouse was informed by prisoners that they formerly never heard the Divine Name on Norfolk Island except in blasphemy, and that now the Sunday was spent in an orderly manner. The cautious Commandant ensured the presence of some free persons on all occasions, so that he might know how the services were conducted. Occasionally he was present himself.

The kindly Quakers on many occasions strove to direct the thoughts of inquiring convicts to healing fountains. When the Friends were about to leave, they received an address from "the prisoners of the Crown (Protestants), who wished publicly to thank the Quakers for their unwearied zeal and attention to their salvation." "Permit us," they said, "to implore that you would convey to Major Anderson, our Commandant, the deep sense we entertain of his great anxiety, since he assumed the command, for our well-being here and hereafter. That a kind Providence may conduct you both in safety, through the trackless deep to the haven where you would wish to be, is, gentlemen, the ardent wish of this congregation."

Assuredly not less welcome was such a testimony both to the Quakers and the Commandant than if names had been given, which, perhaps, were omitted in consideration of the families to which they belonged.

Backhouse gratefully recorded the kindness with which Major Anderson welcomed and aided him in his benevolent labours.

To another strange undertaking did this dutiful soldier address himself. In the official records were preserved accurate accounts of each prisoner's past career. The Commandant found that one hundred and sixty had been soldiers. Their crimes had been, for the most part, threatening or striking officers or noncommissioned officers. He endeavoured to arouse in them a sense that from soldiers more ought to be expected than from other men. In one respect he claimed fellowship with them, and promised encouragement to the well-behaved. "I am a soldier," he said, "and consider you still—all but soldiers."

> "There is some soul of goodness in things evil
> Would men observingly distil it out;"

and the Commandant was rewarded for his pains. When he announced that he would put them in rooms and in working gangs by themselves, and "if I require you I shall put arms in your hands, for you are, or have been, soldiers, and I shall not be afraid to trust you if I require you," the men began to cheer, but were silenced by a reminder that no such outbreak could be allowed. Discipline and obedience were expected. If they should ever associate with their former companions, they should go back at once to them and remain outcast in misery with them. Only once did his soldier-gang give him trouble. An overseer reported to him that they refused to work. The Commandant rode up and ordered them at once to their task. One man, Shea (formerly of Anderson's regiment), stepped forward with a hoe, to discuss the matter. The Commandant knocked him down with a heavy stick, and rode over him, saying, "You, sir, who know me long and well—you dare to raise your voice against my authority! You dare to disobey my orders! Get up, sir, and go instantly every one of you to your work!" The man obeyed, begged pardon, and the whole body went to their task. Within sight were the ordinary convicts watching the issue. The Commandant used to say that on no other occasion did he ever lift his hand against a prisoner in Norfolk Island. When he could he recommended the restoration of his soldier-convicts to their old regiments. Amongst them was the

mutinous Shea, who afterwards served faithfully in India with his old Commandant until, while he was bathing in the Ganges, on the route between Chinsurah and Cawnpore, an alligator ended all his troubles, in 1842.[1]

Even under Anderson's rule the desperate recklessness of the wildest convicts exhibited itself. Twice did men without previous quarrel attempt the lives of their comrades; admitting afterwards that their only motive was weariness of life and a wish to be hanged. Judge and jury arrived from Sydney and their wish was gratified. Yet on the whole the rule of the dutiful soldier prospered.

After a time the reputation of the island-prison improved. Priests consented to go there, and superseded the prisoner pastors. Sir George Gipps wrote in 1842 that "the state to which Norfolk Island had attained under Major Anderson towards the close of Sir Richard Bourke's government, and perhaps still more under Major Bunbury in 1839, was not, I am disposed to think, far different from what the condition of such an establishment ought to be."[2]

By his military despotism, tempered by personal kindness, Major Anderson redeemed the island from some of its horrors. A practical knowledge of what is due from man to man enabled

[1] A few words about the upright and gallant Anderson will be acceptable. He joined the 78th Regiment in 1805, before he was 15 years old. He served as Ensign in it at Maida in July, 1806; fought in Egypt in 1807, in Portugal and Spain from 1809 to 1812; was at Talavera, Busaco, Torres Vedras: commanded a brigade at Punniar in Hindostan in 1843, and was wounded there, as he had been in the Peninsular War. He was Knight (1837) of the Royal Hanoverian Guelphic Order and Companion of the Bath. His commanding figure decorated with his war-medal and clasps for Maida, Talavera, Busaco, and Fuentes d'Onor, was one of the ornaments of Governor's *levées* for many years in Victoria, where he finally settled and died in 1877, in his 88th year. Those who knew him personally felt genuine pleasure when they met a man whom they knew to be as modest as he was conscientious and brave. Those who knew him not, admired the soldierly form which towered high in all assemblies. His name will be encountered in subsequent pages.

[2] Parliamentary Papers, 1843, vol. xlii. Maconochie had so confounded matters that Gipps added that "the best thing to do with Norfolk Island will be to let it revert to what it was prior to the year 1840." Maconochie himself, while announcing his scheme (1839) for "cultivating active social virtues," exclaimed, "How glorious a career is opened by it to England, to humanity, to the human race."

him so to act as to enforce respect and win esteem, until his detachment was relieved and he vacated his post. But all commandants were not so dutiful nor so successful, and the depravity of male communities of convicts aroused the conscience of mankind. Captain A. Maconochie, R.N., ere long poured theories of "management by love" into the ears of public men, and was afforded an opportunity of testing his scheme at Norfolk Island. He published, in 1839, his views on the "social" as opposed to the "silent and separate" systems of convict management.

For many years, by articles in reviews, by letters, and by speeches, Dr. Richard Whately, Archbishop of Dublin, had assailed transportation of criminals as a national sin, entailing curses on the colony to which convicts might be sent. His abstract arguments were irrefragable, but his conclusions were overstrained. He assumed that the moral taint must necessarily spread through all gradations of society, and that without checking her internal crime, England might create a community of criminals abroad; exhibiting "on a great scale an appalling specimen of the utmost point to which the human race could be depraved by a system." He knew not how the earnest labours of excellent mothers had kept their children from contagion; how deep a gulf those who were branded by the emancipists as "exclusionists," had fixed between themselves and the convict class. Archdeacon Broughton and Colonel Arthur, on various grounds, contested many statements made in a letter from Whately to Earl Grey (1832). Whately, in an elaborate reply (1834), admitting their courtesy and ability, returned to the charge, and urged that a commission of inquiry was required to probe the matter. Colonel Arthur, with great force, replied in 1835.

In 1837 a Select Committee was appointed by the House of Commons, and a death-blow was dealt to the system of the past. Sir Robert Peel, Lord John Russell, Lord Howick, Mr. C. Buller, Sir George Grey, Mr. Ward, Mr. Hawes, and others were members of the Committee. Sir William Molesworth was chairman. A progress report was made in 1837, and the Committee was revived in 1838. Its report was elaborate. It dealt with the history and the effects of transportation, its

tendency to repress crime in England, its influence on the moral condition of the colonies. It depicted the original assemblage of convicts in New South Wales, under their few taskmasters and guards, as producing vice, immorality, frightful disease, hunger, and dreadful mortality among the settlers; decimation of the convicts by pestilence on the sea and famine by land;—and hideous cruelty towards the unfortunate natives. "Such," it said, "is the early history of New South Wales." It asserted that "on the whole, in the families of well-conducted and respectable settlers, the condition of assigned convicts is much the same as the condition of similar servants in this country," but pointed out the evils arising from servitude to an ill-conditioned master who persecuted his assigned servant.

The summary convictions inflicted in 1833 (chiefly for insolence, insubordination, and neglect of work) in New South Wales were 22,000, the whole number of convicts in the colony at the time, being 28,000. The number of lashes inflicted in one month of that year were at the rate of 108,000 lashes in a year. In 1834, when 15,000 convicts were in Van Diemen's Land, there were 15,000 summary convictions, and 50,000 lashes were inflicted.

Sir George Arthur and Sir Richard Bourke were quoted to prove the inequality of the condition of assigned servants, and of the value of their labour to their masters. The evidence of Captain Maconochie, R.N., Secretary to Sir John Franklin, was cited to show that the assignment system was utterly vicious; abuses of assignment of convicts to their wives or relations, and the employment of convicts as teachers or writers for the press, were animadverted upon. The working of convicts in gangs out of irons (out of 2240 employed on the roads, 1104 were out of irons) was denounced by Judge Burton and others, but on this head the report seemed to yield to Sir R. Bourke's statement that these seed-plots of iniquity might be bad in themselves, but the demand for roads was a more imperious need than the abolition of gangs.

The Committee recorded the long and successful labours of Arthur to make punishment deterrent in Van Diemen's Land, where the severity of the penal code had shocked Captain Maconochie. The re-transportation to the penal settlements at

Norfolk Island and Port Arthur was a lower depth still. Sir Francis Forbes, late Chief Justice of New South Wales, told the Committee that "he had known many cases in which it appeared that convicts at Norfolk Island had committed crimes which subjected them to execution, for the mere purpose of being sent up to Sydney," contemplating the certainty of execution there; and an Act had been passed to establish a Court of Criminal Jurisdiction at Norfolk Island, to baulk this unnatural passion to exchange for the grim excitement of a few weeks at Sydney the griping ostracism of live interment in the harbourless island. Sir George Arthur had declared that convicts at Port Arthur had committed murder "in order to enjoy the excitement of being sent up to Hobart Town for trial, though aware that in the ordinary course they must be executed within a fortnight after arrival." So rigid and secure had been Arthur's rule that out of 116 runaways from Macquarie Harbour 101 had perished, six having been eaten by their companions. Yet, in spite of all these terrors, the Committee did not think that transportation deterred from crime. Nay, inviting reports were sent to England by the convict class, many of whom were enriched on emancipation. Transportation "may perhaps relieve Great Britain and Ireland from a portion of their burthen of crime; though from the little apprehension which transportation produces, that fact may be reasonably doubted." Such being the effect in England, the Committee found it in the colony too frightful to be told. Criminal records revealed much, but oral evidence proved that there were many crimes not tried in the courts. The disparity of proportions of each sex was a social monstrosity which demanded redress.[1] The Committee handled the burning ashes of the emancipist disputes. The emancipist party had originated under the Government of General Macquarie in 1809. "The party is a numerous one, as the number of emancipists in 1834 amounted to between 15,000 and 16,000, while the remainder of the free population did not much exceed 21,000." Many of them were wealthy, and they form

[1] Up to 1837 the transportation of convicts to New South Wales, had been —males, 43,506; females, 6791: to Van Diemen's Land—males, 24,785; females, 2974. It was not until 1817, that convicts were sent direct from the United Kingdom to Van Diemen's Land.

"a powerful political party whose chief object is to maintain the position that all the free inhabitants of the colony, both those who have been convicts and those who have not, ought to possess equal rights. This party, however, is not merely composed of persons that have been convicts, but it includes in its ranks a considerable portion of the free settlers, some of whom are persons inclined by their habits to associate with the criminal population, and to participate in the feelings of that class; others, however, are amongst the most respectable inhabitants of the colony, and on the ground of political principle, join the emancipists' party. The members of the anti-emancipist party in New South Wales attribute the increase of crime in that colony partly to alleged relaxation of convict discipline, under Sir Richard Bourke, partly to the action of the jury laws, which permit persons who have been convicts to become jurors, and lastly to the increasing number of emancipists."

The Committee admitted that Arthur's system had diminished the number of grave offences, but they nevertheless commended Bourke. They condemned the second objection also, holding, that to prevent an offender from acquiring civil and constitutional rights after expiration of his sentence was unjust, degrading, and calculated to "drive back to crime." The validity of the third reason they admitted.

The effect of transportation on the moral character of the colony was declared to be pernicious. The free could not but be corrupted by intercourse with large numbers of the convicted and infamous. They found that evil material consequences were dreaded from the discontinuance of transportation. The stoppage of forced labour must make industries pine. The English Government had expended £7,000,000 in maintaining their military and convict establishments, and the settlers had employed convict labour and sold the produce of that labour to the Government. But there must now be a dearth of labour under any condition so far as convicts were concerned, for the stream of convicts could not fill the gap already existing.

Some other source must be discovered, and the Committee rejoiced that active steps were being taken by the Government to encourage free emigration. The defraying of passages of free immigrants by proceeds from colonial land sales seemed to be founded on the soundest principles, but the Committee thought it would be

"absolutely necessary to raise the minimum price to £1 per acre, and eventually it would probably be found advantageous to carry it considerably higher still. For it is obvious that by raising the price of land the tendency of population to undue dispersion over an almost unlimited territory, which is the cause of the want of labour, may be checked as much as may be desired . . . Experience must determine, and experience only can do so satisfactorily, what will be the proper price to put upon land, in order neither too much to check, nor unduly to facilitate, the gradual extension of population over the vast regions which are open to the enterprise of the colonists of Australia."

Sir William Molesworth, the chairman of the Committee, had drunk deeply from the Wakefield spring. The recommendations of the Committee were: "That transportation to New South Wales, and to the settled districts of Van Diemen's Land, should be discontinued as soon as practicable." That confinement with hard labour at home or abroad, for varying periods, should be substituted;—penitentiaries or houses of confinement be established,—"convicts be encouraged to leave the country with the prospect of supporting themselves by regular industry;" and "that the convicts who have been punished abroad should be compelled to leave the settlement in which they have been punished within a limited period after the expiration of their sentences; and that means should be afforded them by the Government for this purpose."

Throughout the report it might be seen that the opinions of Captain Maconochie were viewed with more respect than they received in the colonies, where, soon after his arrival, he spoke as if he were Sir Oracle. Appended to the report was a vigorous letter from Dr. Whately (Archbishop of Dublin), following up his labours of previous years, denouncing the continuance of transportation, and declaring that even if after years of exertion "we still find ourselves struggling against evils, we should console ourselves with the reflection that this is to be attributed not to our having at length made the change, but to our having deferred it too long."

As early as 1838, Governor Gipps hinted that discontinuance of assignment of convicts in towns might be desirable; and Lord Glenelg in 1839 expressed the concurrence of the Government and their wish to discontinue assignment entirely

The steps taken by the Government may be briefly described. An Order in Council (22nd May, 1840) revoked existing orders as to places to which convicts could be transported, and made Van Diemen's Land and its dependent islands, and Norfolk Island, the only places to which convicts under sentence of transportation could be sent in the South Seas.

On the 8th October, 1839, Gipps announced to his Council that by a despatch dated 11th May, 1839, he had been instructed that "all convicts arriving in future from the United Kingdom are to be transferred to Norfolk Island, and that they are not to be assigned to private individuals during any part of their servitude. The assignment regulations applying therefore henceforth only to the convicts who are already in the colony, the settlers must be prepared for the immediate diminution of assignment, and the speedy discontinuance of it altogether." It was declared by Lord J. Russell that in "August, 1840, transportation to New South Wales would cease for ever." Morally the colony was to be regenerate. Economically the prospect was dreary to some eyes. How could even the most pressing household wants be met? Moreover, the most hardened criminals were left in the hands of the Government. The convict settlement at Moreton Bay was abandoned in 1839, squatters having taken live stock from New England to Darling Downs, though the district was not however thrown open for occupation until 1842. In 1840, Gipps was compelled to pass a special measure for the better control of female convicts at Paramatta, where the "female factory," as the receptacle for them was called, was enlarged because they could no longer be sent to Moreton Bay. In 1841 he was confronted by a grave obstacle. The law of the colony (3 Will. IV., No. 3) required him to send all doubly convicted offenders to Norfolk Island; Lord John Russell's instructions forbade him to do so. The Legislative Council, he knew, would be disinclined to amend the local law in any manner which would authorize the retention of doubly convicted prisoners in New South Wales. He obtained from his Council a temporary Act which sanctioned the retention of such convicts for one year in the colony, so as to allow time for receipt of instructions from England. He selected Cockatoo Island (afterwards called Biluela) as their abode, the colonists having been in consternation

at a ludicrous proposition made by Lord John Russell that doubly convicted prisoners should be confined at Goat Island,[1] described as very close to Sydney, and occupied by the principal "powder magazine of the colony." Gipps still earnestly asked for authority to transport from New South Wales the worst of the convicts; and the doubly convicted already at Norfolk Island, more than a thousand in number, he could in no manner deal with. Sir John Franklin's Council was unanimous in declining to receive the New South Wales convicts. Lord John Russell's experiments closed Norfolk Island against them. The noble lord resolved to try two distinct systems of penal discipline at Norfolk Island and at Tasman's Peninsula respectively, in order to prevent confusion and intermixture. He announced in 1841 that he would send 2000 convicts as the *corpora vilia* to be worked upon. The giving of orders was easy. Gipps and Franklin were to perform the difficult duty of obeying them, with scanty means, and in a time of commercial distress. Sir John Franklin endeavoured to meet Lord J. Russell's views. He obediently formed probation gangs of two or three hundred men, under the control of Captain Forster as "Director of the probation system." Forster required Imperial aid to enable him to carry out the new system, and Franklin promised to support his requirement. Lord John Russell was in a condition to be happy. Fond of notoriety he rushed into new schemes from which wiser men might have shrunk. He seemed to live upon the reputation of the Reform Bill, which, engendered by others, was affiliated to him. But he was as ready to abandon lineal offspring as to become a putative father. When after propounding a novelty he found himself supported by numbers, he was bold as Hudibras before action. When he looked round in vain for a majority he was quick to desert his standard. Whether abandoning a Ministry threatened by Mr. Roebuck, striving to form one when relieved from his colleagues, or insidiously caballing against Peel by motions which he himself had no

[1] It does not appear whether the noble lord knew that Goat Island was but a speck in the harbour at Sydney. He wrote—"Goat Island within the government of New South Wales, and King's Island within that of Van Diemen's Land, would appear to be proper selections as places of confinement for prisoners convicted in their respective colonies." Parliamentary Papers, 1843, Vol. xlii. Despatch, 6th July, 1840.

intention to act upon, he was ever the same—rash to pronounce, bold when urged on, but unsagacious of the future, and mistaking the happiness of mankind for prosperity of the Whig party,—under his guidance. He had propounded theories for Van Diemen's Land and Norfolk Island, which other men were to deal with. The stigma of transportation was not removed from the colonies while thousands of convicts were annually poured into Hobart Town and Norfolk Island. The emancipated rogues of England were still to be filtered through nests of pollution into the homes of Australia. The supposed advantage of compelled labour was to be withheld. The acknowledged evils were to be imposed.

A strange sight was then seen. Apparently unaware that their conduct would be pointed at as a proof that their moral judgment was unsound, the friends of the emancipist class protested against the discontinuance of transportation. A public meeting was held in Sydney in 1839. A petition, unanimously adopted, ascribed to the assignment system a catalogue of virtues, and denounced the evidence given in England against it as "erroneous and delusive." Morally, financially, politically, the colony had recently prospered. No contaminating effects were to be apprehended from convicts; and there was a "rapid endowment of churches and chapels." It seemed as if moral obliquity entailed mental incapacity. The same men who resented ostracism because they had been convicts, loudly demanded that convicts might be poured amongst them. The Patriotic Association appealed to Charles Buller in laboured letters, to which Sir John Jamieson's and Dr. Bland's names might be appended without regret, but whose association with Wentworth is to be deplored. They averred that the evidence given to the House of Commons by Major Mudie, Mr. James Macarthur (of Camden), Dr. Ullathorne, and Dr. Lang,[1] "aspersed

[1] Dr. Lang stated that some of the free immigrants were jeered at in Sydney and publicly taunted, and that in the conversation of the convict class, unsavoury epithets were constantly joined to the word "immigrant" Dr. Lang was right. But the convict class contained various elements. Men transported for crimes of passion or violence often felt repugnance to dishonesty; and as a rule those who desired to return to a reputable life did not taunt the immigrants. There were innocent persons among the convicts. One estimable woman transported to Van Diemen's Land lived for many years as a trusted nurse beloved by all, and bearing her lot with

the moral character of the colony." They pleaded for postponement of the doom of transportation.

It is noteworthy that the petition of 1839 was publicly adopted, and was signed by more than 4000 persons. After a few years the mere holding of such a meeting would have been impossible. But in 1839 many of a street crowd had been convicts themselves; and, howsoever Dr. Whately might denounce them, it was perhaps not unnatural that the *fæces Romuli* should decline to swell the chorus of their own condemnation. Eventually they took other views. When the free inhabitants outnumbered the bond, and the latter by dissipation and disease were disappearing from the face of the land, the residue of them plunged with ardour into the crusade against that transportation which kept up the memory of their former condition, and tended to keep down wages.

Even in 1839 the wiser members of the emancipist party abstained from that offensive demeanour towards the free immigrants, which was indulged in by the more forward of the freedmen. But the legacy of Macquarie's evil deeds could still foment ill-feeling. In depreciating the "exclusionists" or the free, the vanity of the emancipated and of their clients found food. Shortly after Governor Gipps notified to his Council the discontinuance of transportation, he presented his estimates for expenditure upon police and gaols. They were voted, although Mr. John Blaxland and Sir John Jamieson recorded their usual protests. It was moreover resolved—

"That in the opinion of this Council the colonial revenue is unequal to the payment of the whole expense of maintaining the large police and gaol establishments, necessary chiefly for the due restraint of British convicts, without encroaching too heavily on a fund, the whole amount of which, it is essential to the prosperity of the colony, should be expended in the encouragement of immigration; and, moreover, that in equity and justice one-half of the expense of the police and gaol establishment ought to be borne by the British treasury, so long as the penal character of a large proportion of the population subsists."

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apparent meekness. How the iron had entered her soul was shown when her innocence was established in England and a pardon was sent to her. The death of her affliction killed her with its shock of joy.

Petitions urged the Governor to recommend to the British Government the substance of the resolution adopted by the Council.

Gipps, in his speech to the Council (May 1840) in the following session, proposed "to cause the police of each district, and the public works within the limits of the same, to be defrayed, as in England, out of funds raised in each district by local assessments;" but on the motion of Mr. James Macarthur of Camden the second reading was shelved.[1] Gipps informed the Secretary of State that the reasons prominently set forth in the Council were—That the Bill was introduced to provide for the police, a portion of which the Council had always maintained should be borne by the Home Government, and that the Council, not being a representative body, ought not to impose taxes. The former reason, he said, was the operating one, as he had since been requested to introduce a similar measure confined to highways.[2]

The transportation question was blood-poison to the colony. Everywhere it cropped up. Gipps had introduced a Municipal Corporations Bill, modelled on the English law of 1836. Its provisions excluded emancipists from being electors or elected in the corporations. The emancipist party protested against the Bill as unconstitutional and impolitic. The Governor was assured that the emancipists were "fast retiring" from notice. This, if true, neutralized the hardship complained of, but passion is illogical. Three of the leading counsel at the Bar appeared for the complainants at the Legislative Council. Sir John Jamieson on their behalf gave notice to move in the Council, and eventually effected his object in Committee, that no free person should be disqualified from municipal franchise by reason of any expired or remitted sentence of transportation passed out of the colony of New South Wales; and a few days afterwards James Macarthur presented a petition from magistrates, landholders, and others, urging that if persons who had endured sentences of transportation, should after pardon or lapse of seven years be

[1] By six votes to five, the second reading was put off for six months.

[2] James Macarthur carried a resolution to this effect on the 4th August, 1840, and on the 6th the energetic Gipps laid his Commissioners of Highways and Public Works Bill on the table.

eligible as councillors or aldermen, emigration of respectable persons to the colony would be discouraged, and valuable colonists would be driven away;—that it was illegal by English law, and, if not so, it was plain that it ought to be so in the colony.

They also prayed to be heard by counsel, and on the motion of Mr. James Macarthur it was resolved (by 7 votes to 6) to hear them. Gipps warmly opposed the majority, and on the following day, dreading the stirring of the ashes of strife, stated that as the consequence of hearing the counsel for the petitioners must be a revival of those agitating and exciting feelings which he was aware had formerly existed, he deemed it his duty to proceed no further with the Bill;—and thus a wholesome measure was withdrawn—the Commissioners of Highways Bill sharing its fate because of the same difficulties. Some of these events may now appear trifling, but at the time they rent society from head to foot, and a faithful chronicle must record them. Those who lived amongst them can vouch for the accuracy of the picture. The Patriotic Association denounced in a letter to Charles Buller, "the party" by whose efforts the withdrawal of the Bill had been brought about.

A few words as to Captain Maconochie may here be in place. He was appointed superintendent at Norfolk Island, after fruitless efforts to have his field of operations fixed at Maria Island, King's Island, or Tasman's Peninsula. Maconochie soared into so new a sphere, that disciples of Sir George Arthur wondered at his fine frenzy.

Convicts were to be managed on social principles. They were to be rewarded by marks of approbation. They were to commence their career with a debt of fictitious marks against them, proportioned to their crimes. They were by good conduct to redeem them, and with them to purchase indulgences. Maconochie was sanguine enough to hope they might eventually buy their rations, "the moral effect of rations being always bad." There was to be an "improved vocabulary." "Imprisonment" was to supplant the word "transportation," in order to destroy malodorous associations. There was to be a library at Norfolk Island. Good books and novels were to be there. The collection was rather to be extensive than scrupulously select. Maconochie was "more doubtful of a national theatre, yet Shak-

speare's Plays ought to be included. . . . The English drama is often licentious, but substantially its tendency is moral, and I extremely doubt the value of any virtue founded on ignorance, or the mere absence of licentious images." (If he believed in abundance of virtue founded on the presence of such images he was to be sadly disappointed.) Music was to be cultivated "as an eminently social occupation. It is sometimes thought to lead to drinking; but this, where true at all, applies to rude rather than scientific music," and Maconochie's pupils would neither be rude nor unscientific. He would not separate the sexes altogether; he was "persuaded that a thousand softening influences might be thus communicated." He saw great advantage in allowing "an intelligent prisoner in whom I otherwise had confidence" to act as counsel for accused convicts. The free officers on the island did not agree with him. Not example to society, but reform of the criminal was his object. "Fear casts out love, as love fear," he said.

On the proposition to send women to Norfolk Island, Gipps wrote (February, 1840): "Women have never yet been sent to Norfolk Island, and the universal impression is that it would be highly dangerous to have them there (not less on account of the male convicts than of the troops who guard them)." As to the object of convict discipline, Gipps said: "However agreeable Captain Maconochie's opinion may be to the dictates of humanity. it is not, I believe, the received one of legislators, who rather require as the first object that it should be a terror to evil-doers."

Lord John Russell found that the Inspectors of Prisons in England recoiled from Maconochie's ideas, but he "still wished the experiment to be tried, with the clear understanding that Gipps would remove him if mischief should ensue."

In June 1840 Gipps reported his surprise at finding that, within a week of arrival at his island-government, Maconochie had abolished the existing distinction between convicts freshly arriving from England, and the doubly convicted who had been re-transported from Sydney—

"disregarding the effects which so great a change at Norfolk Island was calculated to produce on the large convict population of New South Wales, and the feelings of dissatisfaction and alarm with which the colonists would contemplate the speedy return to the colony of more

than a thousand persons of the most reckless character, who had been sent from it for the commission of crimes for the most part of the deepest dye."

When Gipps expressed his disapproval, Maconochie excused himself at great length, but was cut short by a peremptory despatch in which Gipps told him that whether the system pursued with the doubly convicted at the island was bad or good, it had caused transportation thither to be "held in great and salutary dread by the convict population of New South Wales, and to destroy that dread before even any substitute for transportation to Norfolk Island had been devised, would be to expose this colony to risks for which he would not make himself responsible."

The enthusiastic Maconochie also "regaled the whole convict population with punch on Her Majesty's birthday, and entertained them with a play;" which elicited immediate and "marked disapprobation" from Gipps, whose authority to remove Maconochie was specially repeated at once by Lord John Russell. Later in the year, on the motion of Mr. James Macarthur, the Legislative Council resolved unanimously—

"That the effect of transporting convicts to Norfolk Island or other penal settlements, and introducing them at the expiration of their sentences into New South Wales, must inevitably be to inflict upon this colony a continuance of the worst of the moral evils arising out of transportation, together with the necessity for the enormous police expenditure inseparable from such a system, without any countervailing advantage, and would be both unjust and in the highest degree impolitic. That his Excellency the Governor be respectfully requested to communicate the foregoing resolution to Her Majesty's Secretary of State for the Colonies, and to represent the very earnest desire of this Council, that the strictest prohibitory measures should be adopted and enforced to prevent the introduction into this colony, under any pretence whatsoever, of convicts transported to Norfolk Island, or any other penal settlements after the termination or remission of their several sentences."

Gipps wrote that he must candidly say the colonists objected with reason, and Lord John Russell pointed out that he had in a previous despatch (not received in the colony when the resolutions were passed) directed that convicts, whose sentences were

about to expire, should be drafted to Van Diemen's Land, which was thenceforward to be the moral sink of the empire. In 1839 a public meeting at Launceston had earnestly deprecated the sudden discontinuance of assignment. Names known before, and afterwards, as those of respected colonists appeared in the proceedings,—Archer, Cox, Gleadow, Wood, Henty, and Walker.

A Wesleyan and a Baptist minister supported a petition to the Queen, which was unanimously adopted, and prayed that Her Majesty would not sanction any measure for abolishing transportation coupled with assignment. The petition was graciously received.

Convicts were in the mean time poured into Norfolk Island, until it was reported by Lord John Russell to be "full," and he acquainted his colleagues with his intention to send 300 additional convicts to Bermuda. With the general question, viewed socially in England, this history need not deal at length; but one or two facts may be stated. Crime in the United Kingdom had increased frightfully. Transportation had lost its terrors. Statesmen were at their wits' end. James Mill declared that there was "but one testimony, that New South Wales of all places on the face of the earth, except perhaps a British prison, is the place where there is the least chance for the reformation of an offender; the greatest chance of his being improved and perfected in every species of wickedness." The population of England had increased between 1805 and 1841 in the proportion of 79 per cent., and the increase of criminals was 482 per cent. At about the same period committals were twelvefold as numerous in Ireland as they had been in 1805. Scotland was little better. Shovelling criminals southward seemed to be no preventive of crime. In ten years (1834 to 1843) 39,844 deep-dyed offenders were transported to Australia. It was imperative that some new system should be adopted, and the labours of Whately and others led up to the report of the Transportation Committee in 1838.

The names on the Committee carried weight. The step then taken was followed up in later years by the substitution of penal servitude for transportation. It was determined that the English crime-factory should consume its own smoke, and not send foul odours abroad. There was the hope that the problem of dealing with criminals might be better solved by patient attention at

home than by the somewhat cowardly expedient of shipping them off to young colonies. The manly resolution appears to have been rewarded. It may be that augmented comforts and higher wages assisted, but it is nevertheless a fact that from 1842 to 1855 the rapid increase of crime was stayed, and that there was in the third quarter of the century a notable diminution of serious offences, while the improvement in the police warranted the belief that fewer criminals escaped the arm of the law than had evaded it before. The mode in which transportation to Australia was abolished must be postponed to a chapter dealing with a period long subsequent to the date of the report of the Committee of the House of Commons. It may be remembered in passing, that the greatest "chance of reformation" was in assignment of a convict to a master, and the most perfect training "in wickedness" was in the Government gangs. Lord John Russell propounded an elaborate scheme for multiplying the gangs, and assignment was abolished. The unwisdom of his conduct must be clear even to those who believe that no percentage of reformation of assigned servants could compensate for the moral degradation transfused through the community by accepting them.

To avoid frequent recurrence to the subject it has been needful to trace the convict question generally beyond the time of Governor Bourke. He had local troubles with regard to it, and one of them led to his resignation. His own kindness of heart might have misled him as it misled the poor creature Maconochie. But he was surrounded by persons who provoked him into errors, from which the example of Macquarie should have saved him. He was probably unaware of the intriguing nature of some around him. His time was fully occupied.[1]

[1] I may give an example of his cares. Shortly before he left, he wrote thus to my father. The holograph in Sir R. B.'s handwriting is before me now.

"*Government House, Paramatta,*
"*November 16th, 1837.*

"DEAR SIR,

"I can assure you it would have given me great pleasure to have heard frequently from you in pursuance of the arrangement to which you refer. You would have found me always ready to assist you in your charitable endeavours in favour of the deserving, whether free or bond. In the

The "Bushranging Act" of Governor Darling was about to expire in 1832, and immediately after his arrival Bourke was constrained to renew it for two years. But its provisions, to his mind, seemed harsh. In 1834 he issued circulars to the magistracy on the subject. In reply they "clearly asserted" the necessity for renewing the Act, "a sentiment (the Governor informed his Council somewhat pathetically) which is, I presume, in accordance with public opinion, as whilst every possible notoriety has been given to the proposal for prolonging the duration of the law, no petition from any quarter has been presented against it." He thought that the Judges would warn the Governor, under the terms of the Constitution Act, that some provisions of the Act were not in accordance with the common or statute law of England. "Nothing but a conviction that the Act is necessary for the security of His Majesty's subjects should induce the Council to prolong it. Upon this ground, and upon this ground alone, can so wide a departure from the law of England be justified."

The days of Donohue, Walmsley, and Webber, and the summoning of soldiers to the field, were rife in the remembrance of the Council which had passed Darling's Act, and observed the marvellous change it had wrought. A temporary renewing Bill passed through all its stages in one day. Two months afterwards a more carefully-drawn measure was referred to a Committee, of which Chief Justice Forbes was chairman. The Governor consoled himself with the reflection that as the Habeas Corpus Act had been occasionally suspended in England, it was not repugnant to the English Constitution to restrict "the usual liberty of the subject when the public safety demands the limitation."

The Select Committee could not recommend any weakening of the law. On the contrary, they advised that the power to

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present case I gladly avail myself of the opportunity of acceding to your wishes, and have directed the ticket of Wallis to be restored.

"I am, my dear Sir,

"Very faithfully yours,

"The Rev. G. K. Rusden, M.A." "RICHARD BOURKE."

When the number of prisoners in the colony at the time is borne in mind, the task of personally attending to every case laid before him will be seen to have been heavy upon a Governor.

apprehend persons unlawfully at large should be extended to all free persons whatever, although not employed in the police force, and that magistrates should grant warrants without requiring information upon oath. They justified the advice on the ground that the security prevailing in the colony was due to Darling's Act, and that 11,997 male convicts had arrived in the colony in the four years which had elapsed since its passing. The brave Burton exercised the power conferred upon a Judge by the Constitution Act,[1] and represented that certain provisions of the new Act were repugnant to English law.

The Council unanimously exercised its power of adhesion to the Act on the 26th August, 1834, and when a few weeks afterwards Dr. Wardell was shot on his own grounds close to Sydney the community saw no reason to distrust the policy of the Council, and the demeanour of the murderer made the public accord with them. In a measure dealing with the transportation and the punishment of convicts, which the Governor passed as early as August 1832, he was able to infuse a milder spirit and give guarantees for humane administration. The Act dealt with the powers of Courts of Quarter Sessions and Petty Sessions. In the latter the magistrates were restrained from awarding more than fifty lashes. Labour in irons, for not less than six nor more than twelve months, it was still within their power to inflict. Half a century after the foundation of the colony the disgusting function of the public flogger might be seen plied near the various police stations scattered throughout the colony in the neighbourhood of the petty court-houses. Most of the cases brought before the Petty Sessions were charges of drunkenness, disobedience, or other misconduct of convicts against their masters.

The atmosphere of repulsion, which had in the earliest days been thrown around penal establishments, was maintained by Bourke in the Act of 1832. Neither at Moreton Bay nor at Norfolk Island was any vessel permitted to touch without written license from the Governor. One of the kindly provisions made

[1] 9 George IV. cap. 83, sec. 22. The Governor and Council could adhere to their view, and the Act would then take effect, "until His Majesty's pleasure shall be known, any repugnancy or supposed repugnancy of such law or ordinance to this Act or to any charter, letters patent, or Orders in Council, or to the laws of England notwithstanding."

by him for the welfare of his criminal subjects was in a Savings Banks' Act (1832), which authorized deposits by "prisoners of the Crown." The handwriting of the Governor was required for the withdrawal of principal or interest.

Although it pleased the Patriotic Association to aver that transportation led to wholesome financial results, it also pleased their ablest man to denounce the charges for police and gaols which were cast upon the Colonial Treasury. Even in the nominated Legislature there were protests which in 1835 occupied many pages of its proceedings. Bourke's proposal to expend £65,500 was only carried by seven votes against six. Colonel Snodgrass, the senior military officer, while he voted for it, recorded his opinion that the colonial revenue ought not to bear such a charge. Mr. Lithgow, the Auditor-General, voted for the charge rather than see the provision "altogether withheld" as "proposed by some members;" but he respectfully submitted that while the colony did so much for the mother country by maintaining her convicts, it was "reasonable that the great portion of the police and gaol establishments should for some time longer be borne by the Home Government." Mr. Robert Campbell, and the gallant and highly esteemed E. C. Close, protested vigorously against the vote as unjust, and because it had "been carried by the votes of those members who are officers of the Government in opposition to the sentiments of a large majority of the respectable inhabitants of the colony." Messrs. Alexander Berry, Richard Jones, and Hannibal Macarthur denounced the vote in unmeasured terms. Mr. John Blaxland, as usual, was provided with a protest more lengthy than that of other men. Mr. Archibald Bell had voted with the Governor to "prevent temporary embarrassment," but protested on principle against burdening with the weight of the penal establishments colonists who were maintaining as assigned servants more than 20,000 convicts; against applying to any other purpose than that for which they were surrendered the proceeds of land sales; and against an impracticable attempt to disburse such an "enormous sum annually." A despatch from the Secretary of State had estimated the annual charge at £25,000, and some of the reforming settlers argued that no more than that sum should be imposed upon the colony. The increase of the colonial revenue was not

accepted as a plea for the expenditure. It was required to promote immigration of sober, industrious immigrants to raise the character of the community. The protests were made in the Council in September 1835. Meanwhile Select Committees, appointed on the first day of the session, had been inquiring into the subjects of police and of immigration. Mr. Macleay, the Colonial Secretary, was chairman of the first.

With Wentworth thundering out of doors, and recalcitrant members in his Council, Sir R. Bourke could not be ignorant of the views of colonists, and it was perhaps fortunate for him that on general grounds Wentworth's followers were friendly to the Governor. It was ascertained afterwards that on the subject of the droits of the Crown he commended Wentworth's reasoning to "the early attention of His Majesty's Government," and it is probable that Wentworth knew the fact at the time. The Governor prudently avoided saying anything that could irritate, and the colonial records are singularly bare as to the answers with which he turned away wrath. His treasury was full. *Populus me sibilat, at mihi plaudo, simul ac nummos contemplor in arca.* He was at this very period pursuing the pernicious course of leaving large balances at interest in the banks, although public works were urgently needed; and, with his own approval, an outlay on immigration had been demanded and sanctioned. He took credit for thus increasing the facilities which the banks could afford to private enterprise, and if he could have ensured the continuance of those facilities in time of pressure he might, in a mercantile sense, have been justified. But he paved the way for intensifying the crisis which was at hand.

The Select Committee on police made a final and elaborate report in June 1835. The expenditure had grown from less than £6000 in 1811 to more than £36,000 in 1834. In 1818 there were only twelve magistrates in the colony, of whom five were in Sydney. In 1825 Sir Thomas Brisbane formed the noble corps of mounted police from the regiments serving in the colony, and increased the number of magistrates to sixty-nine. Darling raised the latter to ninety-three in 1826, and in the following year to one hundred and three. The mounted police corps was then augmented, and at that time the pay of ordinary constables was in Sydney 2*s.* 10*d.* a day, in the country 2*s.* 3*d.*,

at which rate it had remained until 1835, when in Sydney there were about one hundred police, and in the country about one hundred and seventy. The ominous entry of "twenty-four scourgers" revives memory of days when thousands of convicts were held as assigned servants throughout the homes of the colony, and amenable to the lash.

The mounted police, the terror of evil-doers, consisted in 1834 of a captain, three subalterns, a sergeant-major, seven sergeants, sixteen corporals, and eighty-four privates. The total cost of the corps was £6865, of which forage cost more than £4400. A tendency to make Courts of Petty Sessions mere departments of Government, by multiplying stipendiary magistrates, had grown up, which Bourke discountenanced in 1833, wisely remarking that "the benefit which the mother country derives from the services of an unpaid magistracy cannot be lost sight of even at this early period of the colony's existence, without endangering by disuse, and the formation of other habits, the enjoyment of this privilege in future times."[1]

A charge for police, gaols, and hulk, was, in 1828, in round numbers, £21,000; and in agreement with a despatch from the Secretary of State (30th July, 1827), was paid out of the military chest. In 1834, however, the Secretary of State (Spring Rice) instructed Bourke—

"To take measures for providing out of the revenues of New South Wales, after the 1st July, 1835, the charges which were defrayed from the military chest for police, gaols, &c., the commissariat still continuing to pay from funds provided from England all charges immediately connected with the custody and superintendence of convicts, including the penal settlements and the medical establishments, and also the vessels employed in communicating with the penal settlements and detached military stations."

The Committee did not feel authorized apparently to add their official opinions to the almost universal reprobation which the burden thus cast on the colonial revenue encountered. Their suggestions were chiefly practical. They proposed to increase

[1] A fatal tendency to multiply paid magistrates has been manifested under responsible Ministers, with disgraceful exercise of patronage in appointing unpaid magistrates as a mark of distinction, it being known that some of them were too ignorant to interpret an ordinary English sentence.

the total number of police from 318 to 477, and the cost from £19,000 to nearly £32,000. The use of the lash at the time may be inferred from the fact that no less than twenty-seven "scourgers" were included in the staff proposed. Their recommendations for the control of unauthorized occupants of Crown lands, known as "squatters,"[1] coupled with suggestions from the authorized occupants whom the squatters lived by robbing, caused the passing of a measure to restrain the unauthorized occupation of Crown lands in 1836; and the augmentation of the police corps which the Committee proposed was approved of, and carried into effect by Bourke. It will be seen hereafter that the evil thus nipped in the bud in 1836 was sanctioned by the Legislature of New South Wales in 1861, and by that of Victoria in the following year, when by means of free selection before survey any reprobate could plant himself in any secluded spot adapted for his nefarious purposes. The original lawless selectors were not removed without trouble. It was the endeavour of the Government to remove them without harshness, and magistrates and others lent their aid to effect the purpose. Considerable time was occupied in the process.

The payment from the Colonial Treasury of the whole expense of police and gaols formed the burden of continual complaint in Sydney. On the 7th October, 1840, on the motion of Mr. James Macarthur, the Legislative Council resolved that at least one-half of the expense should be borne by the Home Government, whose interests in the convicts controlled were great; that it was with reluctance that the Council had voted the expenditure for 1841;

[1] In the report the original use of the word "squatter" in the colony appears. "The nefarious practices of these men are greatly facilitated by the system of taking unauthorized occupation of Crown lands or squatting which now prevails. It appears that many convicts who become free by servitude, or who hold the indulgence of tickets-of-leave, take possession of Crown lands in remote districts, and thus, screened from general observation, erect huts for their temporary purposes, and become what is generally termed squatters." They raised property by depredations; they sold spirits, and contributed to debauchery;—and the Committee suggested an enactment, if need be, "to place these" squatters "under strict control and summary jurisdiction of the police." In process of time the term squatter was applied to all occupants of Crown lands by license, and the unauthorized occupant had no name, unless he was called cattle-stealer, or "cockatoo," *i. e.* an occupant of a small, ill-fenced plot.

and that the colony suffered severely by the distracting of £597,000 (from 1st July, 1835, to 31st December, 1841) from general requirements, to police and gaol establishments. Macarthur was reputed to belong to the orderly and constitutional party; Wentworth would growl where Macarthur would conciliate. But on this point the colony was unanimous. Gipps forwarded the resolutions to Lord John Russell, with the curt statement that he had so frequently written on the subject that he felt further remarks unnecessary.

The able Chief Justice Forbes was chairman of the Committee on Immigration in 1835. It took evidence, and made progress and final reports in the same year. The rapid spread of flocks and herds over Australian pastures had created a demand for labour which convicts could no longer meet, and with the increase of the free and freed population there grew up moral objections (as well as selfish jealousies) to the introduction of forced labour. The moral taint of convicts pervading the farm, the household, the market-place, and the streets,—nay, intruding through the juries into the administration of justice,—was calculated to inspire horror in all minds not made callous to it by use. The jealousy of the freed man, and free immigrants, of the command of convict-labour by a master who would otherwise be forced to hire labour in the market, provided a fulcrum which it needed no ability on the part of popularity-hunters to use. The fate of the transportation question was sealed when it was brought to bear concertedly throughout the colonies. Every effort to promote free immigration furnished fresh battalions to fight the battle as to the continuance or discontinuance of convict labour. Gibbon Wakefield's 'Letter from Sydney' in 1829 announced new principles of colonization, and in 1831 the Colonial Office danced to the tune of the new piper. Lord Goderich sounded the Governor of New South Wales as to the feasibility of providing an immigration fund by a tax upon convict labour, and extension of land sales with abatement of quit-rents in proportion to the number of immigrants an employer might enable to reach the colony. The ineffable absurdity of pressing men to take convict labour by offering grants of land, and then proposing to tax them for employing convicts, hardly requires to be pointed out.

The Land Fund was resorted to in promoting immigration. Lord Howick in 1831 urged its use. The obstacle to the scheme was the superior cheapness of transit to America, which diverted emigrants thither in preference to Australia. Commissioners were appointed in June 1831, and they recommended that £8, the estimated half-cost of a passage to Australia, should be contributed by the Government, and that loans should be made to assist mechanics in emigrating. So little was known of Australia in England at the time, that the report drawn up by Forbes stated that the publication of facts by the Commissioners had the effect of reducing the cost of passage for an adult from £30 to £18 or £20. In 1832 the Commissioners were relieved from their duties, and a Committee was formed in London at the request of the Secretary of State to select young women as emigrants. The Government assumed the same function in Ireland. Whether sufficient care was exercised or not, disreputable persons were sometimes introduced. Dr. Lang testified that "a large portion of them were of a class with regard to morals from which emigrants ought not to have been brought to the colony." Mr. Macleay and Mr. Riddell, the Colonial Secretary and Colonial Treasurer, gave similar opinions. All the witnesses spoke of the dearth of labour in the colony, and Mr. George Cox of Mulgoa declared that he was ready to employ sixty labourers if he could procure them. Yet, in addition to the annual importation of convicts the Government had paid in three years and a half more than £27,000 towards the immigration of 2848 persons; the population of the colony being about 70,000 souls, of whom 25,000 were convicts. Some witnesses recommended the passing of a law to enforce the performance of contracts made in England for service in Australia, but Mr. (afterwards Sir) William Macarthur, a son of old John Macarthur, more sagaciously warned the Committee that such indentures would fail, and the Committee reported that they would tend to discourage immigration. The Committee vehemently urged that the funds arising from the sale of lands should be "held sacred to the promotion of immigration." Sir R. Bourke strongly recommended the English Government to adopt the suggestions of the report. Lord Glenelg approved in the main. Shocked by the open immorality in some of the

ships which had conveyed single women, he proposed to encourage the emigration of families. Bounties were to be given to emigrants on the following scale: £30 for every married couple; £5 for each of their children between two and seven years; £10 for each of their children between seven and fifteen years; £15 for each unmarried daughter between fifteen and thirty years; and the same amount to any young woman between eighteen and thirty accompanying an emigrating family, and under their care. The Land Fund of the colony was to bear the charge. But still the spread of flocks and herds out-paced the lagging supply of labourers, and a project to procure Hill Coolies from India was brought before Sir R. Bourke in 1836, and was referred to the Committee of the Legislative Council. Maugre all objections as to "paganism, habits, colour, &c.," they recommended in 1837 that the experiment should be tried by a grant of £6 for each Coolie imported, "the demand for early relief being so urgent." They advised also that the scale of bounty for immigrants from the United Kingdom should be raised.

Sir Richard Bourke made great changes with regard to the support of education, and of religious establishments. A sum which the Secretary of State promised to Dr. Lang was appropriated in 1831, "in aid of an Academical institution to be formed in Sydney on the principles of the schools and colleges in Scotland:" an advance of £1500 being made in the first instance, for the repayment of which such security as might be "judged expedient" by the Attorney-General was to be given. Other grants in aid of various churches appear in the Appropriation Bills of Bourke, who obtained the reputation of partiality to the Roman Catholic sect. In his speech to the Council in 1833, he was able to say, however, that he had it "in command from the Secretary of State to represent their wants," and to promise the co-operation of that functionary in giving assistance to Roman Catholic schools, and appointing additional Roman Catholic chaplains. Thus early did the Whigs bid for support in Ireland by offers of colonial patronage. One or two unofficial members of the Council recorded vain protests against grants which carried into effect the new policy. Secretaries of State gave practical proof of their zeal. Between January 1832 and December 1835,

they paid "outfit and passage" for nine Roman Catholic priests and catechists. In the same period they paid outfit and passage for one clergyman of the Church of England. Judge Burton, in his work on religion and education in the colony, called attention to the fact that during 1833 and 1834, the Government "refused to sanction any allowance towards passage, residence, or means of support for any additional clergyman" of the Church of England. Archdeacon Broughton was in England in 1835, and on his urgent appeal under these circumstances the Society for the Promotion of Christian Knowledge granted £3000, and the Society for Propagating the Gospel granted £1000 to aid the Colonial Church which the necessities of the Whig Government seemed to induce them to discourage. The question of education excited commotion. In 1826, a Church and School Corporation had been founded by the King's letters patent. The Governor, the Chief Justice, members of the Legislative Council, other officials, and the "nine senior chaplains appointed to officiate and perform Divine Service according to the rites of the Church of England in the colony"—were to form the Corporation. They could hold and acquire lands; and, under certain conditions, borrow money. Funds were to be divided in two equal parts. One moiety was devoted to an Improvement and Building account; the other to "the maintenance and support of the clergy of the Established Church of England in the said colony, and the maintenance and support of schools and schoolmasters." Two-sevenths were devoted to the last-named objects, and five-sevenths to the stipends of the bishops and clergy. The schools were to be under Church management. Though created in 1826 it was not until 1829 that the Corporation obtained possession of any lands, excepting the Orphan School Estates (granted by Governor King) and parish glebes granted at various times. No money was voted by Parliament for stipends beyond June 1826, and for three years the Corporation were *quasi* agents in defraying charges which had previously been paid from the Treasury. Grants of land were capriciously made. In some districts there were none. The total acreage was 435,765, of which 168,000 acres were in the then remote county of Gloucester. The male and female Orphan Schools were found by the Corporation in "a loathsome state of disease

and filth." There were, in 1826, 101 males and 129 females maintained at an average cost of £13 5*s.* 0*d.* and £19 6*s.* 0*d.* respectively. In 1832, great improvement had been effected in health, cleanliness, and conduct, and 125 males and 165 females were maintained at a cost of £9 8*s.* 0*d.* and £8 12*s.* 0*d.* in the schools. Archdeacon Broughton arrived in Sydney in May 1829, and had hardly addressed himself to his new duties when a despatch announced the intention of the Home Government to revoke the charter of the Corporation. Though he had been in constant communication with the Colonial Office while in England the intention to revoke the charter had been concealed from him.[1] Irregularity delayed the action of the Government until 1833, and the revocation they determined upon in 1829 was not completed until 4th February, 1833. After six months the Corporation was legally dissolved, and the Colonial Government appointed a manager of the estates. A female School of Industry, which the good Lady Darling had founded, and which was supported by voluntary subscriptions, fell under his control. It was contended by friends of the Church of England, and Judge Burton, in a published work[2] (1840) agreed with them, that the grants to the Corporation had been duly secured to the Church; that the colony had been founded on the principle on which they were made; that the principle was not incongruous with the existence of the Scotch Church locally in Scotland; and that the maintenance of the Protestant Reformed religion established by law was "within the obligations of the Coronation Oath, and the provisions of the Bill of Rights." The contention was vain. The Archdeacon strove to obtain endowment to replace the confiscated property.

Sir Richard Bourke had set his heart upon a different scheme. He desired to reproduce the sagacious plan by which, on Mr. Stanley's[3] suggestion, a national system of education had been

[1] 'The State of Religion and Education in New South Wales.' W. W. Burton. London: 1840.

[2] *Ibid.* p. 38.

[3] Afterwards Lord Derby. While the excellent Archbishops, Whately of the Church of England, and Murray of the Roman Catholic Church, exerted their combined influence the system worked admirably. The latter died in 1852, and bigotry and intrigue have marred the school system in later years.

founded in Ireland which confined the teaching by the State to that which could be honestly received in common by all. He also desired to introduce a piebald patronage of religion. Not because any form of religion was true would he support it by the State funds, but because by endowing all forms he desired to ingratiate himself with all sects. He thought that all had their price, and he was anxious to pay it. Amongst his parasites was Roger Therry, a devout believer in the philosophy of Escobar, which as it has survived the shafts of Pascal, will probably never lack devotees. But wiser heads than Therry's pulled the wires which moved him and his master.

The polished Dr. Ullathorne had been Vicar-General for the See of Rome for several years, and in 1835 Dr. Polding had arrived as Bishop. Governor Bourke was impelled to correspond with the Secretary of State, without whose sanction no vital change could be made. Petitions were presented to him by Dr. Lang and by the Roman Catholics for special aid in various places, for ministers' salaries and for schools.[1] One-third of the incoming convicts were Irish and Roman Catholic, and the arrival of members of their families to join them swelled the Roman Catholic population to one-fifth of the whole. After the dissolution of clergy and school reserves Sir R. Bourke embodied his views in a careful despatch to the Secretary of State. He urged that "equal encouragement should be held out" to Christian denominations; that aid should be given to building places of worship and ministers' dwellings; and that salaries should be allotted to chaplains (to be appointed by the Crown), bearing a proportion (with a fixed maximum of two hundred pounds) to the number of the congregation. In strange opposition to the scope of his general proposition, he proposed to limit the aid to three denominations, the Church of England, the Presbyterian, and the Roman Catholic bodies, which he called "the three grand divisions of Christians." He recommended that Archdeacon

[1] A Roman Catholic bishop was expected in 1835. His co-religionists pointed out that £150 a year was inadequate to meet ordinary wants, and "Our prelate will have to provide himself a genteel residence, suitable episcopal paraphernalia, travelling expenses, a library, stationery, a secretary or clerk—all which with other *et ceteras* are indispensable to his efficiency as the head of his department."

Broughton should be made Suffragan to the Archbishop of Canterbury or to the Bishop of London, the inconvenience of dependence on the see of Calcutta being "too obvious to require much proof." The establishment of a Presbytery, and the recent appointment of a Roman Catholic Vicar-General, would effect all that was required for the other two bodies. The successor of Archdeacon Broughton might receive a lower salary, while that of the Roman Catholic head might be increased.

The primary schools maintained under the Church and School Corporation had been thirty-five in number. In them, as in a superior school, the King's School at Paramatta, the religious instruction was that of the Church of England. The teaching in the Male and Female Orphans' Schools was of a similar character. He proposed to establish throughout the country schools formed on the principles of the Irish national schools. Ministerial changes delayed a reply, but in 1835 Lord Glenelg gave a qualified approval. He highly commended the manner in which, in the national schools, formed on Mr. Stanley's plan in Ireland, opportunities were afforded for imparting religious instruction "to the children of different persuasions by their respective pastors." For himself he wished it might be "thought practicable to place the whole of the New Testament at least in the hands of the children." He sent information with regard to "national education in Ireland, and also a report of the British and Foreign School Society," feeling assured that he might safely leave to the Governor "and the Legislative Council the task of framing on these principles such a system as may be most acceptable to the great body of the inhabitants," and most effectual. The Governor, in July 1836, proposed to grant £3000 to initiate schools on the system adopted in Ireland.

Forthwith the able Archdeacon Broughton (who became Bishop of Australia) petitioned to be heard before the Council against the grant. Technical informalities prevented his taking his own seat as a member at the time. He was told that the rules of the Council did not permit him to be heard in person. He submitted at the next sitting of the Council an elaborate petition. A General Committee of Protestants supported him in a separate petition. Dr. Lang and other Presbyterians were members of the General Committee, with Wesleyan, Baptist, and

Independent ministers; and many highly respected lay colonists. All eyes were fixed upon the Governor, who was deemed to be intent upon conferring favours to secure support from the Roman Catholic friends of his obsequious retainer, Roger Therry. He carried his proposal (25th July) by eight votes against four unofficial members, who vehemently protested. The feeling of the existing Council was such that no sooner had the vote been carried than a resolution was passed unanimously, that in the new schools "a chapter from the authorized version of the New Testament shall be read at the opening of such schools on the first morning of the week to those Protestant children in attendance."

On the 3rd August the Bishop spoke vigorously at a "General Committee of Protestants." He arraigned the "haste" with which the Governor's scheme was urged. He denied that it was in accord with Lord Glenelg's desire that any system should be promoted in opposition to the "general wish." He pleaded that his zeal was justified by the necessity to resist a "real and very formidable danger." Protestantism rested upon the principle that Holy Scripture contained "all things necessary to salvation, and that the use of it should be free to every man who has a soul to be saved. . . The Reformation will continue in security only so long and only in proportion as that principle is held inviolable." He quoted the Bull (Unigenitus) of Pope Clement XI. condemning the proposition that the Holy Scriptures were for all men. He disclaimed personal animosity. He would live peaceably with all men. "Let us be careful not to extend the contest to the Roman Catholics as individuals, and not even to express ourselves uncharitably with respect to their religion." The speech was reprinted in pamphlet form "by order of the General Committee of Protestants."

Sir Richard Bourke, scared by the general opposition, did not proceed with his scheme. With his Church measures the Governor was more successful. They appealed to less logical but more popular ideas. Lord Glenelg approved of his proposals to endow indiscriminately "places and ministers of worship, or as it may be more briefly described, public religion." The amount of private contribution was to be "the condition and measure of public aid." No other principle seemed to trouble

the noble Lord. He had "frequent communications with Mr. Archdeacon Broughton" (who had hastened to England to oppose Bourke's proposals), whose zeal and energy were so conspicuous, and who would, as the fittest person in His Majesty's choice, be made Bishop of Australia. In 1836 the Governor carried a general measure "to promote the building of churches and chapels, and to provide for the maintenance of ministers of religion in New South Wales." It enabled the Government to make grants for buildings as well as for stipends. If one hundred persons testified their desire to form a congregation a salary could be awarded. As in the days of slavery in America, a State was allowed to compute the slave population as entitling their masters to representation in Congress, so in Australia for a humaner purpose, convicts were reckoned in the population desirous of Christian ministrations. At the session of 1837 Bishop Broughton was inscribed amongst the members of Bourke's Council. Two new members appeared there at the same time: Sir John Jamieson, the friend of Forbes and the President of the Patriotic Association; and Mr. E. Deas Thomson, the Governor's son-in-law, who having been the Clerk of the Council became Colonial Secretary in the room of Mr. Macleay. The Governor had apparently acquired paramount control over the institutions of the colony. But he shrunk from reviving the moot point of public education. The Protestant and the loyal feelings of a majority of the community had been so unmistakeably declared against his former proposals that, whether he thought them logical or not, he resolved not to encounter them. His opening address to his Council did not mention the subject. Unconscious of coming distress he congratulated them upon the quietude of the colony and its rapidly increasing prosperity.

In 1837 he passed measures ancillary to his Church Act. He provided for the appointment of trustees by various religious bodies to hold the properties created under sanction of the general Act, which had been approved in England. The art of human necessities was indeed strange which compelled earnest men to sanction indiscriminate endowment of contradictions. But it is difficult for the dwellers in ancient communities to picture to themselves the blankness which meets the gaze of

those who in the press of material wants in a young settlement seek for means of spiritual culture for their fellow-creatures.

The minute control of the Colonial Office, often set in motion by questions or objections raised in the Treasury, cannot but strike the labourer among colonial records. Large items or small ones were equally liable to be cavilled at. A vote for a Government House, or twenty pounds for some apparently trifling expenditure, required special sanction. The toils of Governors and the needless labours of Downing Street were multiplied by irritating details. As late as May 1841 we find a separate despatch from Lord John Russell to Sir George Gipps approving the expenditure of three hundred pounds "towards the formation of a library" for the Legislative Council. A special instruction to Sir Richard Bourke (4th March, 1832) directed him to prepare before the end of June in each year an estimate of the whole of the expenditure to be charged in the ensuing year. If agreed to by the Legislative Council it was to be passed in the form of an ordinance, and transmitted for His Majesty's assent. The protest of any minority of the Council against it was to be sent to England for consideration. If the Council rejected the estimate the Governor was to request the dissenters to "furnish such a one as they would propose, and should you still give the preference to your own, you will be pleased to transmit both estimates to me," with reasons on both sides.

It might have been hoped that such a direction, though fruitful of protests, would render unnecessary special applications for the sanction of small grants of money by the Secretary of State. But it was not so. In the journals of the Council will be found addresses asking for increase of salaries of functionaries and for various special grants.

One of these will appear in an incident in the career of Dr. Lang, which will afford means of testing the value of the statements put forward by him under the name of History. Ever busy, he was in England in 1831, and successfully applied to Lord Goderich for a loan for an academical institution. It appears that at the same time he made an Erastian application to the noble Lord for an extension of his leave[1] of absence from

[1] Despatch, Lord Howick to Sir R. Bourke, 29th March, 1831. Lord Goderich granted the leave.

his spiritual functions in the colony. The loan, sanctioned by Lord Goderich, was formally resolved upon in the colony in November, 1831, during the interval between the departure of Governor Darling and the arrival of Bourke. It was to be made in different payments, "on condition that previous to each advance an equal sum shall have been actually expended from the private contributions of the promoters of the undertaking, and that security be given on the proposed buildings which are to be erected on the Scotch Church Estate, for the repayment in five years of the money advanced from the Colonial Treasury." Lord Goderich having also "consented to an advance of £1500, being part of the £3500 above alluded to, being made to Dr. Lang immediately on his arrival with a certain number of immigrants;" and Dr. Lang having arrived with the immigrants, the Acting Governor (Lindesay) recommended immediate payment of the £1500, "it being understood that no further advance be made to Dr. Lang on this account until a sum equal to that amount shall be actually expended on the proposed buildings." The arrangement recommended was adopted unanimously—"security to be taken on the proposed buildings for repayment in such manner as may be judged expedient by the Attorney-General." Warned by Dr. Lang's readiness to tamper with the amounts of subscription (narrated already as having been reported to Sir Thomas Brisbane), the Council demanded security in order to protect the Government. The sequel proved that they under-rated the ability of Lang or over-rated that of the Attorney-General.

A beginning of trouble occurred in 1832, when the Legislative Council felt itself called upon to request the Governor to inform the Secretary of State that certain charges (against clergymen of the Church of England), in a letter from Dr. Lang to Lord Goderich, "were unfounded and unwarrantable, and that the publication of the same was a highly improper and censurable act."[1] In 1835, Lang petitioned the Council for aid for the Australian College. He wanted £100 as "salary for each of the two Professors or Head Masters." He had imported four

[1] Advocating resumption of the Church and School Lands, Lang urged that they blocked out immigrants, "excited disaffection, sowed the seeds of future rebellion . . . secularized the Episcopal clergy, and lowered the standard of morals and religion."

literary men. One had died. One had gone to Van Diemen's Land. One (Carmichael) had left the college. Other institutions received aid, and Lang's petition, still among the records of the Council, prayed for aid on like principles. In 1836 we find the Rev. H. Carmichael (who had left Lang's College and established a private boarding-school in 1834) petitioning against a proposal to grant £600 to Dr. Lang for expense incurred in procuring passages for certain Presbyterian ministers. The petitioner had himself immigrated to take a post at the Australian College, but like many others found Dr. Lang intolerable. The petition was not received, and the money was voted to Lang without a division.

The affairs of the Australian College underwent investigation by a Select Committee in 1841. Lang never endeavoured to hoard money by his manœuvres with trusts or subscription funds; but he always paid his expenses, and by sturdy begging succeeded in obtaining grants for the church or institution by whose resources he had gained personal or political profit. His enemies could not call him a petty larcenist, and his friends swore that he was a martyr. In the case of the college and buildings, he had curiously interwoven his own, the church, and the college funds and trusts.

The reader has been told how Lang, being in England in 1825, obtained from the Colonial Office an order for salary for himself at the rate of £300 a year, in lieu of the pecuniary assistance previously promised for building a church.[1] In 1826, he applied in Sydney for his salary, but as it was found that a portion of the promised building money had been already paid, option was given to the Presbyterian body, of which Lang was head, to give up the grant or the salary. An Act was passed in 1832, to enable the trustees of the church to mortgage their land to the Government for the required repayment, and a deed was executed in 1833, securing repayment of £520 advanced to the church, and £3500 lent to the college. It had been provided in 1831 that the college buildings should be erected "on the ground belonging to the Scotch church," but this provision was evaded by Lang. He was then Principal of the college as well as Moderator of the Presbyterian Assembly, and the Chair-

[1] Legislative Council Proceedings, 1843. Report of Select Committee.

man of the College Council stated to the Committee that the Council "frequently wished to exercise control over the building expenditure, but were over-ruled by Dr. Lang." Asked why they could not exercise control, he answered, "From various causes; the loan of £3500 authorized by the Secretary of State, was not paid to us, but to Dr. Lang upon his individual application, in conformity with rules laid down by the Governor in proportion to the progress of the building."

But to make himself more completely master of the situation, Lang caused the buildings to be erected partly on land which was conveyed to himself individually, and thus effectually thwarted the provision that security was to be given by the Scotch church for repayment of the sums advanced to the church and to the college. These facts only became public in 1841, through the inquiries of a Select Committee of the Legislative Council, and they were also curiously complicated. Jamieson Street was to be altered, and an exchange of land was arranged between Sir John Jamieson and the trustees of the Scots church, the latter agreeing to take two building allotments from Jamieson, the better to carry out the arrangement. When the conveyance was drawn by Lang's solicitor, no notice was taken of the exchange of lands between Sir John Jamieson and the trustees, and the conveyance was made absolute to Lang. As the trustees were Lang and three others, ignorance on Lang's part could not be alleged.

Sir John Jamieson's solicitor, Mr. Norton,[1] stated to the Committee: "I conceive that the whole of the land ought to have been conveyed to the trustees, and I objected to the conveyance as prepared in favour of Dr. Lang." Lang averred that one trustee was dead, that Captain Piper had taken no active part in the trust and was absent, and that the other trustee, Mr. Ramsay, consented to the conveyance to Lang. Norton took the precaution to see Ramsay, who with Lang represented that the college was indebted to Lang for building expenses, and that to enable him to repay himself and to pay Sir John Jamieson (the seller) Lang would "be compelled to obtain a mortgage on the land which could not be done if the land were conveyed to the trustees." Lang added that he was willing, subject to that loan, to convey to the trustees; and Norton, impressed with the belief

[1] Who always stood in high estimation, professionally and socially.

that Lang had provided the whole of the buildings, and "could at any time be compelled to release to the trustees,"—assented to the proposed conveyance. Sir John Jamieson testified, however, that he conveyed the land "expressly for the purposes of the college." Lang having thus barred the trustees from their rights, and the Government from their security, proceeded to fortify his position still further by building the college buildings on the lands thus improperly conveyed to himself. The colonial architect stated to the Committee: "The buildings stand partly on ground given by the Government to the Scots church, and partly on land obtained from Sir John Jamieson. About two-thirds of one house and one-third of another stand on the Scots church land; the remainder of the buildings stand on the land obtained from Sir John Jamieson." Moreover, the buildings were not applied to college purposes. Lang lived in one in 1841, and one of the Professors stated that before Lang went into it, it was occupied as the 'Colonist' newspaper office"—(the 'Colonist' being one of the literary engines which Lang at various times conducted, and for libels in which he was occasionally prosecuted). When the Committee held the inquiry it was found that the institution was not prosperous. A Professor who had taught in it for more than six years, declared that it had "been nothing more than a high school, or a seminary of a superior description." Competition had injured it, and it had suffered from disputes between the Presbyterian clergy. So secret had been Dr. Lang's operations that a Professor who had been in residence some years, was "not aware whether the ground bought from Sir John Jamieson was conveyed to the trustees of the college or not." One of the most respected inhabitants in Sydney, Dr. F. L. Wallace, declared that he had been a shareholder for years, but that there had "been no meeting of shareholders," no statement of accounts, no report of affairs except such as was inserted in the 'Colonist' newspaper (not on authority of the College Council), and that there was a want of confidence in the management, and dissatisfaction with Lang's control. Four days after the appointment of the Committee, Lang scenting danger mortgaged to a Loan Company the land conveyed to him by Jamieson, and thus still further complicated the condition of affairs. He was examined, and put forward claims for re-imbursement of large sums

which he declared he had advanced, but his claims exhibited a contempt for precision. No fractions of pounds appeared. £200 was set down for his expenses in England in 1830 and 1831. The cost of the four buildings was set down as £8000, but the colonial architect testified that, though of that value in 1841 the cost of the whole would, when they were built, be £4800. The exposure appeared complete, but the position of the Government was absurd. It was the Scotch church that had given security for repayment of £3500, but it was on land held by Lang that much of the money was expended. Lang professed his readiness to make any requisite conveyances as soon as arrangements with regard to liabilities could be completed. The Committee reported that the "consideration received by Sir John Jamieson for the land conveyed by him to Lang appeared to have been partly in money and partly in land belonging to the Scots church,"—that land so conveyed to Lang included two of the college buildings and portions of the two others, and that Lang had obtained £1500 by mortgaging it to a Loan Company, "notwithstanding that it was distinctly understood that the security[1] to the Government was to include the whole of the college buildings, and that the property could neither be mortgaged nor disposed of in any way without the sanction of the Government." The Committee recommended that whenever the Scots church shall have been legally vested in trustees according to the provisions of the Church Act and the Presbyterian Temporalities Act, it should be altogether released from liability to the Government for the debt of £520, the remission of the claim being most conducive to the interests of religion and the dignity of the Government. As to the college debt, the voice of the Committee was more uncertain as to method. They

[1] Although the despatches and reports on the subject are extant, and their contents are included in the report of the Committee from which the text is derived, Dr. Lang, presuming that memory or judgment might be imposed upon after lapse of time, stated in his 'History' that "Lord Goderich never intended the loan to be repaid." Yet in 1831 and in 1841 Dr. Lang wrote letters and gave evidence acknowledging that the loan was to be repaid, and in 1832 he offered a "*personal bond* on the part of the trustees of the Scotch church, with 'two securities,' as there happened to be technical obstacles to a mortgage by the church trustees at the time." The fact that an actor in such transactions dared to be their pseudo-historian, has called for an extended narrative.

submitted "with deference whether it may not be right that measures should be resorted to by the Government as trustees of the public, and holding a direct pecuniary interest in the Australian College, to secure to that institution legal possession of the land and buildings to which it may be equitably entitled." The Legislative Council, on the 15th September, 1841, advised the remission of the £520, and requested the Governor to cause measures to be taken to "secure to the Australian College the possession of the ground and buildings which were originally intended to be appropriated to that institution." The Synod of Australia felt bound to take some steps in the matter, which will be separately told. It might be supposed that such an exposure would damage a minister of religion, or even a politician, for life. But it was not so. Lang had a faculty for ingratitude. To Mr. Wemyss and early patrons he had shown it. To Mr. Thomas Barker he showed it in 1841. Mr. Barker had endorsed Lang's bills to assist him in promoting the interests of the Australian College. Learning the questionable nature of Lang's proceedings Barker required security. Lang gave security on his own house, sold it, and relieved Barker of his risk, commenting on it in his 'History' by saying that "he who struggles with principalities and powers must take joyfully the spoiling of his goods." If he considered himself robbed when he paid back to Barker money obtained from him, it was clear that he would be much more robbed if he had to pay back the £3500 which Lord Goderich had relieved from interest. The complicated condition of the trusts aided him: and being the sole remaining trustee he was unrestrained by scruples of other men. A suit was instituted, and after numerous delays the Crown nearly succeeded (in Lang's own words) "in compelling the trustees to surrender the property." In this dilemma Lang caused a counter-action to be brought "on the part of the elders of the Scots church as representatives" of the original grantees, and by this means the claims of the public were quashed for the time. Thus (quoth Lang) ('History,' 3rd Edition, 1852), was "the heartless and unprincipled attempt" of the Government successfully defeated. One plea relied on was that the mortgage effected under the powers of a Bill passed for the purpose was void, because the Bill was reserved for the Royal pleasure, and

the mortgage was made before the King's assent was given, though after the Bill was passed in the colony. There had been internal quarrels also. The Rev. Mr. Carmichael was deemed so able a man that to procure his services Lang guaranteed him £200 for a return passage to England after three years. Lang's control proved intolerable, and Carmichael determined to leave. He asked for the passage money; and a meeting was held to consider his claim, which was over-ruled. He then left the college, carrying a large proportion of the pupils with him to a private school, and Lang denounced his conduct as "thoroughly heartless and inexpressibly contemptible." Carmichael openly accused Lang of "dishonesty and fraud" in not paying him the £200, and Lang with a secret consciousness as to his general morality replied in his history: "I never was less open to such a charge in any act of my life." In the 4th edition of his 'History' (1875) Lang, alluding to the college law-suits, says: "I succeeded at length in defeating Sir George and his myrmidons even in their own Courts of Law." As usual he concealed the truth. On the 1st March, 1867, he made an *ad misericordiam* appeal to the Colonial Secretary, Mr. Parkes:

"My dear Sir, may I request that you will do me the favour to endeavour to get my affair of the mortgage settled before you leave town, as I am in the hands of a regular Shylock. Besides the virtual recommendation of Mr. Cowper's Committee of 1865 that it should be cancelled, I think there is sufficient ground for doing so, not on the ground of legal technicality, but on the grounds I have suggested in my paper. 1st, that the original agreement had been virtually set aside by Lord Goderich himself, thereby rendering its fulfilment impracticable; and 2nd, that the Government had received much more than an equivalent for the advance in services rendered to the colony in the way both of immigration and education."

Sir James (then Mr.) Martin, the Premier and Attorney-General, thought it "imprudent to give up by a formal resolution of the Executive Council any equitable claim which the Government might have under the mortgage, and that Dr. Lang ought to be content with the assurance of Mr. Parkes that the Government did not intend to take any steps in the matter." Mr. Parkes conveyed this assurance to Dr. Lang, adding, "My own opinion is, that so far as the Government is concerned the matter

between Dr. Lang and it is at an end" (2nd March 1867). By this method, and not by defeating the Government in the "Courts of Law," was Lang's liability destroyed.

To avoid recurrence to the same subject hereafter, it may be mentioned that in the Presbytery as in the College Lang found scope for difference. He quarrelled bitterly with his brother ministers. In a published address (1839) to the Presbyterians of the colony, he called the Rev. J. McGarvie an artful and malicious knave, accused him of forging a document in the name of the Presbytery, and in a separate paper he averred that McGarvie's friends were those who required "the cloak of a prostituted form of religion to cover their own practical infidelity."

In 1839 Sir George Gipps proposed a Bill to reconcile the incensed worthies. He prevailed on Mr. Alexander Berry, a member of the Legislative Council, to call upon the Rev. J. McGarvie and on Dr. Lang. Mr. Berry reported:

"When I called on Dr. Lang, in the most rancorous spirit he made charges against Dr. McGarvie. When I called on Dr. McGarvie with the charges I found in him an example of meekness, and after refuting much to my satisfaction the charges made by Dr. Lang, he said that, however much Dr. Lang might revile him, he could not forget whose servant he was, nor the injunctions of his Master never to revile again."

The proceedings on the Bill are to be found in the New South Wales Legislative Council Papers of the year 1839.

Lang was not supported in his attempt to uproot the Presbytery of New South Wales, and to form a Synod of himself and his adherents. The acting Committee of the General Assembly of the Church of Scotland condemned his proceedings in 1838, and declared that "to recognize the so-called Synod as a Church Court would be in flagrant violation of the principles of the Church." The same body declared (7th December, 1838) as regarded Lang's allegation that he was authorized by "the General Assembly and the Synod of Ulster to reconstruct the Presbyterian Church of New South Wales, that it was "directly contrary to the facts." Nothing daunted, Lang attributed the unfavourable opinions of his brethren to jealousy of his prominence. "In short," he said ('History,' 3rd Edition), "distinction

of any kind—whether it arises from superior talents or eminent services, from great personal sacrifices or successful exertions—is a crime which *the lower orders of the clergy* of all communions (I use the phrase in its intellectual and moral acceptation exclusively) never forgive . . . these evil feelings reached in certain quarters the height of Satanic malignity." Shrinking from communion with such dark persons Lang was "led to look more attentively than previously at the principle of the General Church Act," and was "irresistibly led to the conclusion that the plan of supporting all forms of religion was latitudinarian, infidel, and essentially demoralizing." Shortly after the period under consideration he renounced all connection with the State and State Churches, and there were not wanting persons who averred that before doing so he had raised money on the security of his permanent stipend. Singularly in opposition to the professed morality of his new ideas he retained possession of the property he had secured under it, in spite of his deposition by the Assembly of the Presbytery in Sydney in 1842.

In 1860 the Presbytery of Sydney published an "Authentic Statement" concerning the deposition, which may be thus summarized. "The Synod of Australia in connection with the established Church of Scotland was formed in October 1840." Dr. Lang, returning to the colony in 1841, was at his own request admitted as a member, and subscribed his assent to its jurisdiction. In 1841 the report of the Select Committee (on the Australian College buildings, &c.) appeared. The Synod appointed persons to confer with the trustees and shareholders as to the future management of the college. They subsequently appointed Lang convener, and other ministers and functionaries to carry out certain arrangements. Lang did not convene the Committee. He would give no information. In 1842, some members of his congregation having presented a complaining memorial, the Synod found occasion to reprehend the absence of ministers from their charges, and their sanctioning the preaching by unauthorized persons in their churches,—Lang being "admonished to pay more regard in future." In the words of the Statement,—

"Dr. Lang was now shut up to one of two alternatives. He could not remain a member of the Synod without restoring the college

buildings, which he had virtually appropriated to himself. Should he renounce all connection with the Synod and openly violate his ordination vows, by following divisive courses, he might lose his Government salary of £300 per annum; but then he could turn the teachers out of the college buildings, and let them for his own benefit, the rents of which would amount to ten or twelve hundred pounds per annum, so that by separating from the Synod he would at once enrich himself, and appear to merit the sympathy of the public by resigning his Government salary."

He lost no time in reflection. On the 6th February, 1842, he denounced the members of the Synod from his pulpit, "as a synagogue of Satan actuated by a spirit of rancorous hostility towards him which could have emanated only from the father of evil." On the 22nd February he convened a meeting in the Scots church, and declared his intention to separate himself from the Synod. The majority of the persons present carried, against some opposition, resolutions to renounce connection with the Synod, "solely on the ground of its connection with the State."

The Presbytery of Sydney met on the 1st March, and a letter of that date from Lang was laid before them. In consequence of the "recent anomalous proceedings" of the Presbytery, "he had directed his attention to the question of State aid, and had been convinced that to receive it in common with other forms of faith was latitudinarian, anti-Christian, and infidel." He was individually resolved to "eat the Queen's bread no longer." Thus moved he had thought of leaving the colony, but the trustees, elders, and others of his congregation had remonstrated. He had consented to remain if they would renounce State aid and provide for their pastor, and "renounce all connection with the existing Synod, simply and solely on account of its connection with the State." They had determined to do so. He forwarded confirmatory documents, and begged at the same time to state that the "trustees, elders, committee of management and congregation, are determined to maintain their exclusive right to the church and other property connected therewith, at all hazards and against all claimants whatsoever." The land and money obtained from the Government for the church were of course as offensive, logically, to his new position, as the salary cast away. But they were of great value, and, like the Roman

Emperor, he perhaps said *Non olent.* For reasons which were never explained he continued to receive even his salary until April. What was anti-Christian in one month was not so in another in his eyes. The "grieved Presbytery" appointed their Moderator and two laymen to confer with him. He would not meet them. He was summoned to appear before the Presbytery on the 5th April 1842, to answer charges for slander in his pulpit, and in "following divisive courses." Lang did not attend. His case was referred to the Commission of Synod.

The Commission met on the 6th April, and on the following day resolved that Dr. Lang be suspended *sine die* and prohibited from discharging any ministerial functions. The Presbytery was instructed to proceed against him according to the laws of the church,—the Synod of Australia deciding finally. The Moderator was instructed to preach in the Scots church, but Lang refused to admit him. Lang, when summoned before the Presbytery on the 2nd August, failed to appear, and after thrice summoning him fruitlessly, the Presbytery referred his case to the Synod. When the Synod met he appeared.[1] He asked questions, but was told by the Moderator that the Court was restricted to the charges. Lang contended. The Synod supported the Moderator, by whose order the libel prepared according to the Church customs was read; it was found relevant, and evidence was called to prove its charges. They were adjudged to be proven. After two days thus devoted, and after appointing deputies to try to win back their obstinate brother, it was moved that the resignation of Dr. Lang be received; but a counter-proposition was made that the Synod proceed to depose Dr. Lang. By eight votes against four the deposition was resolved upon. Lang himself had retired when the libel was read, applauded by his followers for denying the jurisdiction. The sentence, minutes, and evidence were transmitted to the General Assembly of the

[1] In his 'History' Lang avers that he asked whether there was anything which could be laid to his charge before the 6th February, 1842, and "wrung from the Synod the reluctant confession" that there was not. But this averment is mere fabrication. The Moderator fortified himself by obtaining the approval of the Synod and refused to travel in any manner from the terms of the "libel." The persistency with which Lang circulated untruths upon the whole subject has made it necessary to deal with his affairs at greater length than would otherwise be needful.

Church of Scotland, and to the Presbytery (Irvine) which had ordained Lang in 1822. On the 9th September, 1851, the latter body declared "in terms of the Remit of the Commission of the General Assembly of the 30th May, 1843, that the said John Dunmore Lang, Doctor of Divinity, is no longer a minister of this Church," and "no longer qualified to officiate in the Scotch Church, Sydney, until he be reponed in due form."

The Statement of the Presbytery of Sydney concluded by mentioning that when a Bill was introduced in the New South Wales Parliament to enable Dr. Lang to sell the Church land in Jamieson Street, the Synod in order to prevent the alienation of the property filed a Bill in equity against the trustees of the grant.

In 1861 Dr. Lang thought it advisable to dispute the validity of the sentence of the Presbytery of Irvine, he having been "unheard." The Presbytery declining to grant redress, he petitioned the General Assembly with a similar result. With characteristic energy he instituted an action in the Court of Session which decided that he had a grievance, and could prosecute the Presbytery of Irvine for redress.

The last-named body having appealed to the General Assembly to avert a threatened prosecution, was authorized to repeal its *ex parte* decision, and Lang recorded with triumph in his 'History' that as "Paul appealed to Cæsar against unjust Jewish priests," so he had by help of the Lords of Session made the General Assembly lower its flag to him. In a material sense his triumph was greater than St. Paul's. By the Colonial Act it was required that the officiating minister in the Scots church should be duly recognized as such minister by the Presbytery, and should have no right or title if removed by them. It was important for him, therefore, not to lose the vantage-ground of a standing in the Church if he desired still to retain the land and buildings he had so singularly acquired.

Only in a material sense could he be deemed successful. Dr. McGarvie, whom he had so often reviled, was one of the merciful four who voted against the decisive act of deposition, and by his unexpected intercession had proved the grace of Christian charity in the stern soil of Caledonia. Incapable of moral approval, and in the resiliency of his self-esteem perhaps not

valuing it, Lang pursued his ecclesiastical objects by legislative paths. To prevent disjointed reference to them, it is well to mention here that in 1844 he asked for a Committee in the Legislative Council, "to consider whether any and what changes are necessary in regard to the Presbyterian Church Temporalities Acts of this colony in consequence of the recent disruption of the Church of Scotland." The Council afforded him but five supporters against nineteen opponents.[1]

[1] The debate was chiefly memorable for the castigation which Mr. Robert Lowe administered to Lang. It reached so sensible a part that ever afterwards Lang's language towards Lowe was that of obsequiousness, if not servility. Never before had he been known to lick the hand that smote him, though he had often snarled at benefactors. "It was not," said Mr. Lowe, "by any Minister of the Church of Scotland they were asked to entertain the question; in fact, notwithstanding the assertion of the honourable mover, he distinctly denied that there was a single Presbyterian minister in the colony who desired the repeal of these Acts; but it was by one who had been solemnly degraded from his office by the Synod of Australia, for slander, schism, and contumacy." . . . "He very much feared that the honourable gentleman had lost sight of the principles of Presbyterian equality, or had a strong leaning to prelacy, when he found him arrogating to himself the powers of Bishop, almost of Pope, under the modest name of senior minister. Might it not be that an Act which demolished this episcopate or popedom had on that account fewer charms in his eyes? They were much obliged to him for furnishing them with an epoch, an era, which would no doubt be as memorable in the Australian as the Hegira was in Mahomedan history. He had informed them that he sailed for London on the very day of the passing of the Church Act. Thus, then, would it stand in chronology: 1836—Church Act passes—Dr. Lang flies, not from Mecca to Medina, but from Sydney to London, a feat which has been executed before and since by the same nimble personage. And now, in the eighth year of this Hegira, comes again our Australian Mahomet—not like his Arabian prototype, girt with his Alis and Omars, but alone in his might—to subvert the institutions of the infidel. An honourable member had read an extract from a letter signed by Dr. Lang, in which he admitted that he had an interest in the repeal of the Act—that it would set at rest all questions as to his right to retain his church. This was good authority. But there was as good on the other side. (Mr. Lowe then read an extract from Dr. Lang's speech on the 10th October, 1843, on the same subject, in which he stated that the repealing of the Act would not make the smallest difference in his position.) Having the honourable gentleman's authority for the truth of two contradictory propositions, the Council might naturally be in doubt which to believe; but he could set that point at rest. The land on which the Scots church was built was granted on condition that service should be performed in it by a minister of the Church of Scotland. The honourable member had been solemnly degraded from that

The Governor himself was made to feel somewhat of the care of the Churches. It has been seen that the policy of the Whig Government made them sanction unusual expenditure in 1834 and 1835 in defraying the cost of conveying Roman Catholic priests to the colony. The restless Dr. Lang was not slow to sue for similar advantages for the Presbyterians. Sir Richard Bourke appealed to Lord Glenelg to confirm his decision that two Presbyterian ministers who were without congregations should as speedily as possible place themselves in a position to receive "stipends from the Government under the Act," they being at the time without congregations or places of worship. To this the Presbytery and the ministers in question objected. Bourke wrote: "If clergymen are to come out and receive stipends from Government without reference to the provisions of the Act, it had better not have been passed. The precedent of the Presbyterians would be claimed as a rule by the Church of England and the Roman Catholics." Lord Glenelg supported the Governor. Gipps also had to appeal to the Secretary of State in 1839. The increasing charge for ecclesiastical establishments at a time when the revenue was in jeopardy from general causes made him urgent on the subject. "Your lordship is aware that under the Church Act the Government is pledged to provide for as many clergymen as may come to the colony with your sanction, and that therefore the only way in which I can set bounds to this rapidly increasing charge is by requesting you not to sanction for the present the embarkation of any further clergymen of any denomination." For 1840 the proposed charge was £34,006, having risen to that amount from £13,242 in 1834.

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office; but these trustees, neglecting the duty they had undertaken, allowed him to continue in possession of the church. It was the intention of the Synod to commence proceedings to displace these trustees, and thus recover the property for the church. The effect of repealing this Act would be to deprive the Synod of its corporate character, and thus absolutely to annihilate the plaintiff in the suit. Now he put it to the Council whether, if believing the representations of the honourable gentleman that he had no interest in the matter—representations which he had since publicly contradicted—they would not have been most basely, most unworthily deceived?" Corrected report of speech, 'Sydney Morning Herald.' 5th July, 1844. Mr. Robert Lowe became Lord Sherbrooke in 1880, but it is convenient to speak of him in these pages by the name he bore during his short residence in Sydney.

A singular question was raised in 1839 about the position of South Australia. The Royal Instructions excluded the province of South Australia from the authority of the Governor of New South Wales. The Bishopric of Australia as constituted by William IV. seemed to comprise South Australia geographically though not by name. Lord John Russell referred the case to the Queen's Advocate, and requested Gipps to acquaint Bishop Broughton with the opinion of that officer, that the Bishop had "taken a correct view of the question respecting the limits of his diocese, and that the province of South Australia is to be considered as comprised therein."

Another disturbance of the ecclesiastical waters sent ripples far and wide in the colony in 1838. Judge Willis, who abstained from attending public meetings generally, had at a meeting connected with the Society for the Propagation of the Gospel, in advocating the promulgation of "the pure and apostolic faith," expressed his belief that in "the adoption of unauthorized traditions and idolatrous worship the Church of Rome had greatly erred." The Roman Catholic Bishop presided at a meeting held in his cathedral at the close of the Sunday evening service to deal with the words of the offending Judge, and pronounced that it was "unjust to say that Roman Catholics offer idolatrous worship to the blessed Virgin and the Saints." Resolutions were unanimously adopted. The Judge's words were characterized as cruel, uncharitable, and untrue—a wanton and unprovoked insult — inflaming — and astounding. A by-stander seeing the enthusiasm of the crowd, might have believed that none of them knew that men and women had been burned in England by order of the Bishop of Rome on mere suspicion of holding certain opinions, that thousands of Bibles had been in like manner destroyed by the Inquisition, and that the lives of Ridley, Cranmer, and Latimer had passed from the fumes in which they perished to be embalmed in the memories of Englishmen in all time.

The reign of Governor Bourke was a period of legislative activity. The Insolvent Debtors' law was dealt with more than once, but left difficulties for the future. The Customs, Port, and Postage laws were elaborately amended. The introduction of Gas under a "Gas-Light Company," signalized the later period of the Governor's rule. Laws upon Marriage and the

Apprenticing of Orphan Children were passed. Roads, and Streets, and Tolls were dealt with. The Police in Sydney and the Management of the Town occupied a lengthy enactment. A Vagrancy law was passed. For the country districts, Impounding and Slaughtering of Cattle laws were enacted, and a Hawkers and Pedlars law. On all these subjects the Governor, solely responsible, was compelled to obtain information and apply remedies to existing wants. The Crown lands were dealt with, but it will be convenient to postpone their consideration until the time of Governor Gipps, during whose government both the constitution of the colony and the administration of Crown lands were largely altered by Imperial Legislation.

Although the general aspect of the transportation and convict question has required consideration elsewhere, an event which sprang from Bourke's conduct with regard to it demands special notice, inasmuch as it brought about his resignation. The old feeling yet rankled in the minds of the emancipists. They had at Brisbane's departure snatched a fleeting opportunity of exalting themselves, but Darling had done nothing to ingratiate himself with them, and the lowest of their class indulged in insulting orgies when he left. The "exclusives" were still contemptuously apart. The refined Bourke had no predilections which could induce him to associate with emancipated or immoral persons. If he had suffered such a tendency he would have been too wary to expose himself to the fate of Macquarie, by personal intimacy with individuals of the pariah class, but he assiduously courted their good will. He found a pliant instrument in Mr. Roger Therry, Commissioner of the Court of Requests. Through his over-officious zeal Sir Richard Bourke became, in spite of his habitual caution, more and more committed to favour the emancipist class, until his antagonism to social opinions became so pronounced as to make him resign office rather than submit to what he deemed humiliation. The event convulsed Australian society, and may well find a place in history, for that which thrills through all classes is a test of their condition at the time. Some assigned servants of a person named Mudie (not holding a high social position, but a settler and a magistrate) absconded, having possessed themselves of fire-arms at Mudie's premises and fired at his son-in-law while

engaged at sheep-washing in the river Hunter. A hue and cry was raised, one of the foremost gentlemen in the district accompanied the police, who with an unerring black guide followed the fugitives. The convicts turned at bay, and after one of them had been shot by the prominent settler, six were captured and tried. Five were executed, after being elaborately defended by Roger Therry, the costs being defrayed by a warm friend of the emancipist class. After conviction one of the men denounced Mudie and other masters for cruel treatment. Therry's arguments also were so framed as to be accepted as an indictment against masters and magistrates in general.

An inquiry was instituted as to Mudie's management of his servants, but it did not result in proving undue harshness, and the Governor had the candour to say so.

A pamphlet signed 'Humanitas' appeared, and was by some persons attributed to Therry. He himself, in his 'Reminiscences of New South Wales and Victoria,' admitted having received "an early copy" of it. It was found to be the work of a convict named Watt, a "ticket-of-leave" man engaged on the staff of the 'Sydney Gazette.' That a convict, supposed to be under police surveillance, should asperse or even criticize the magistracy roused the wrath of the whole body. Mudie was especially attacked. Another of the convict class, O'Shaughnessy, had been employed, and after expiry of his sentence had become editor of the 'Sydney Gazette,' and Dr. Lang, in a rival newspaper, denounced the assumption by an emancipist of a post which demanded moral worth in its occupant.

Roger Therry, it appeared, was on familiar terms with O'Shaughnessy, for private notes between them came to light. Lang was prosecuted by O'Shaughnessy, Wentworth being counsel for the latter. O'Shaughnessy soon afterwards retired from his editorial post, and his previous coadjutor Watt, while still a convict, assumed it. The "incensed worthies," so often attacked by Watt, determined to lower him from his pride of place. The Superintendent of Convicts, Mr. Hely, was informed by letter that charges of immoral conduct were to be brought against Watt. He referred the writer to the Bench of Magistrates who sat three times a week in Hyde Park Barracks in Sydney. The magistrates declined to interfere without an order

from the Governor himself; and thought Mr. Hely competent to investigate the charge. The repulsed representative of injured morality applied again to Mr. Hely, and receiving no answer had recourse to Sir Richard Bourke, who paid no more attention. He then enclosed to the Colonial Secretary a copy of his letter to the Governor. Still unattended to, he waited on the Governor at Paramatta and stated his case in person. Obtaining no redress, he made a sworn deposition of the facts, saying that the Governor declared that he did not think it a case for his interference, that it was a matter purely between Watt and the deponent with which the public had nothing to do, and that he, the Governor, must refuse to order an investigation. The deponent, Mr. G. Cavanagh, wound up his statement by saying that Watt had virtual control of the 'Sydney Gazette,' which staunchly supported Bourke.

The publication of this deposition was received in some houses with horror. Never before had a Governor declared that it was not his province to repress immorality in the convict class. Macquarie had unduly favoured them, but always on the plea that they were reformed. Watt was shamelessly living an immoral life. Society was indignant. Watt furnished the pretext under which he was at last brought before a court. The authorship of 'Humanitas' had been claimed for an emancipist named Halden, and an article in the 'Herald' newspaper was written and in type respecting Halden, but was not published. Watt learned from a "ticket-of-leave" workman on the staff of the 'Herald' that the article was in type, and induced him to purloin it for Watt's use. The stolen article was sent to Halden by post, an action for libel was brought by him, and the purloining was brought to light. Watt was tried for his complicity in the theft. The 'Herald' proprietor could not swear that the thing stolen had a value, and Watt was acquitted; but the Judge (Burton) who tried the case recommended that Watt's ticket-of-leave should be withdrawn. Sir Richard Bourke (to use his own words) "did not see sufficient cause for so severe a measure." Watt at his trial had inveighed against Mudie, and Mudie now preferred charges against him at the police-office in Sydney. Several unpaid territorial magistrates attended the Bench, and the proceedings were protracted for many days.

Therry appeared for Watt, but the magistrates determined to allow no counsel on either side. Therry then, with notable indiscretion, went on the Bench; but Mudie's protest against his sitting there extorted an admission that he would remain only as a spectator. The paid magistrates took opposite views to those of the unpaid, and after ten days' altercation, during which Sydney and its neighbourhood were in a ferment, the case ended by a remission of the prisoner's case for the consideration of the Governor. He could not fail to see the false position into which he had been drawn. He was conscious that he could no longer shield Watt without assuming the appearance of partisanship, and though he would not yield to Judge Burton's *obiter dictum* that Watt's ticket ought to be withdrawn, he now removed him to Port Macquarie, the general depôt for educated convicts. He alleged no sufficient reason, made no reference to the charges of immorality; but in a letter to Therry (afterwards published) alleged that Watt's "conduct had not been guarded, and that to avoid general scandal it was necessary to remove him." He endeavoured, he said, "to steer a middle course, and to effect his purpose by prudence and mildness."

The bulk of the free colonists thought his purpose was their abasement and undue favour of the convict class.

In Mudie's case the lives of himself and family had been endangered by the mutiny of assigned servants. Twenty thousand servants throughout the colony were convicts, and if a Government abetted the mutinous (Therry, the Governor's creature as he was called, having vilified the masters) the honour, nay the lives, of defenceless wives and daughters would be at the mercy of the criminal class. Had there been no such special terrors there was nevertheless the old spirit which Macquarie had done so much to rouse. Letters were written to the 'Times' newspaper by friends of the settlers. Mr. Dudley Percival, on the Governor's behalf, sent to the 'Times' "a letter by an Unpaid Magistrate," which was openly attributed to Roger Therry in the colony. It defended the Governor and assailed the magistracy. Familiar letters between Therry and O'Shaughnessy on the subject were made public. The Unpaid Magistrate could not doubt that he had invited rebuke from the colonists.

An occasion presented itself. The post of Chairman of Quarter Sessions was to be filled. The magistrates were the electors. Therry, then Commissioner of the Court of Requests, was put forward by Bourke, with a view to his holding both offices, with full liberty to practise at the bar also, although he expressed his intention to abstain from practice if elected. The magistrates saw the opportunity. They were for the most part gentlemen, and had keenly felt Bourke's disparaging treatment and the dangerous social consequences of his screening of the accused Watt. They found a rival for the fawning Therry in Mr. C. D. Riddell, the Treasurer, a member of the Executive Council.

Never were the gentlemen of the colony so united before. In Bligh's time the territory was limited, and his deposition was so swiftly accomplished that he always averred that if he could have reached the Hawkesbury the settlers would have flocked to his aid. Under Macquarie the country districts were not directly affected by the invitations to Government House. As a body the country gentlemen were beyond the pale of action. The strife was now brought to their doors. Bourke and his friends used all their influence, and it was great, in Therry's favour. The creator of magistrates had much in his power; but for the moment the magistrates held the keys of the situation. Bourke informed Riddell that he could not be Chairman of Quarter Sessions and a member of the Executive Council and Treasurer. Riddell took no part, and was elected by a narrow majority. Bourke, in deep chagrin, suspended Riddell from his seat in the Executive Council and tendered his own resignation in case the Secretary of State should not confirm all he had done. Therry imputed moderation to Bourke for not interfering with Riddell's salary as Treasurer, but though he could suspend a high officer, usage required him to preserve to such officer the emoluments of office until the Secretary of State had been duly communicated with. In this instance the Secretary of State disallowed the suspension. Riddell was requested to apologize for allowing himself to be elected, and was directed to resume his seat in the Council. Bourke was separately asked not to resign. Bourke's moderation was extinguished. He resented the result; never went to the Executive Council to

run risk of meeting Riddell, resigned office, and was relieved with expressions of regret.

The convict favourite, who was the original cause of feud, never reformed. He was drowned at Port Macquarie. Mudie went to England, published a scurrilous book, 'The Felonry of New South Wales,' to which he appended testimonials which he had procured from respectable colonists.[1]

Ex-Governors, members of the Legislative Council, ministers of various denominations, magistrates, were invited to testify in Mudie's favour, soon after Sir Richard Bourke had removed him and others from the commission of the peace. Many of them did so. Dr. Lang gave prominence to Mudie's "exertions to bring to justice one of the greatest pests to society" (Watt); and when the testimonials were collected in print, some colonists were surprised to find how estimable a man was said to have been amongst them. An accurate knowledge of the country reveals the fact that none of Mudie's neighbours sung his praises, and that therefore the testimonials he obtained were due to the general public feeling which resented the conduct of Bourke and of Therry. At a later date Mudie returned to Sydney, and was horsewhipped in the street by the son of one of the persons he had attacked in his book. He brought an action, and recovered small damages. Therry defended the horsewhipping assailant.

Therry remained in New South Wales for many years. He also wrote a book[2] as untrustworthy as Mudie's, though from different causes. His mind was incapable of doing justice to a principle: but his heart was warm, and his love of flattery

[1] He applied by letter. Three members of the Legislative Council responded favourably. A fourth, E. C. Close, an old warrior under Wellington in Spain, while regretting that Mudie or others should be "made martyrs through a policy I cannot but deplore," said it was "degrading to a gentleman to beat about for a character, for this is what no one will question in nineteen cases out of twenty." Mudie published this equivocal testimonial amongst others more flattering. He applied to Bourke for the reasons for his removal from the magistracy. "Your Excellency having done me the honour to become my guest, and to dine at my table, will excuse the liberty I take." Bourke thought it unnecessary "to assign any reason for using his discretion."

[2] 'Reminiscences of Thirty Years' Residence in New South Wales and Victoria.' London: 1863.

sufficiently general to devote itself to praise not only Bourke but some of his opponents. Like him who could not "*vitam impendere vero*," he passed a long life without giving offence to the powers above him; but, unlike him, he was accused of being warped by parasitical motives.

Riddell, who was put forward for the chairmanship to defeat Therry, and who resigned the post when the object was served, continued in office as Treasurer for some time, respected for his character to the end, though not for his abilities. He was usually deemed a weak man, yet by assisting the emphatic censure which Therry's candidature caused, he showed public spirit by no means common in any country, and which might have been disastrous to himself.

Therry declared that regret for Bourke's retirement was universal; but he daubed his canvass with too violent a colour. Bourke was esteemed for many excellent qualities, but those who had thwarted his ill-advised exaltation of the criminal class in the person of Watt, felt no regret, though they showed no triumph, when the disappointed Governor withdrew from the scene where he thought he had been humiliated. His admirers were many and active. A public meeting adopted an address, moved by Wentworth, which enumerated his good deeds. Subscriptions for a statue of Bourke,[1] which still stands at the entrance to the Government domain in Sydney, were made on the spot, and industriously promoted. Popular on his arrival, he seemed equally so at his departure. His friends were of the class which is demonstrative in the streets; his opponents, never demonstrative anywhere, had been roused to a rare combination only when they were startled by the favour shown to Watt, which seemed to confound right and wrong, and to uproot a reverence for morality.

Bourke had, moreover, given them reasons to combine. He

[1] It would be unjust to say that the inscription deserves the opprobrious character sometimes given to epitaphs; but the varnish was so thickly laid on as to hide the texture of the material. An untruth was conveyed by the phrase,—"He extended trial by jury after its almost total suspension for many years." A casual reader would be led to think that one of Bourke's predecessors had suspended trial by jury; and only a student could discover that it had never existed legally in the form which the inscription deplores as having been suspended.

was, or seemed to be, anxious to degrade the unpaid magistracy which had thwarted him by electing Riddell, and through whose exertions Therry's patronage of the convict Watt had been brought to light. Many of them had been omitted in a new Commission of the Peace issued in 1835. Some of them asked Bourke to assign reasons for their exclusion. He declined. One of them, John Bingle, prepared a remonstrance for transmission to the Secretary of State. Bourke informed him (January 1837) that he did not propose to despatch it until informed of the result of an inquiry at Invermein, "upon which the Attorney-General has communicated to you." Bingle was charged with cattle-stealing. The accusation was utterly untenable, and Bingle was acquitted in May. Dr. Lang (in the 'Colonist' newspaper) imputed malevolence to the prosecution conducted by the Attorney-General.

Other magistrates were accused of cattle-stealing at Brisbane Water, and the police magistrate, too desirous to conform to Bourke's presumed antipathies, not only committed them, but put them in irons; they were acquitted. Judge Burton on one occasion designated the depositions against them as a "bundle of nonsense." They brought actions against the police magistrate and recovered damages. One of them, Mr. Henry Donnison, conducted his own case with ability, and with a freedom which he did not expect to find in a professional advocate. He won his cause, and in 1838 published a long statement of the cases. Sir Richard Bourke had unwisely spoken of Donnison as "one of the party" hostile to him. Donnison in his title-page declared his pamphlet to be "by one of the party," while to an introduction he signed his name. He was more triumphant than abashed by the indignity cast upon him. He adopted as his motto, "*Quæ contumelia non fregit eum, sed erexit.*"

All these prosecutions of magistrates occurred while yet Bourke's tendered resignation was before the Secretary of State, and they embittered the feelings of those who by their votes had rejected Therry.

Just before Bourke's departure an occasion arose in which, by combining with the friends of Macleay, they were able to read a moral lesson to the retiring Governor. A public meeting was called (November 1837) to address the Queen upon her

accession. Wentworth, the hero of all gatherings of the people, and the friend of Bourke, was there. Macleay was called upon to preside. Wentworth and others vainly objected. They were not listened to when they declaimed against placing in such prominence the creature of Darling. The meeting roared for Macleay; and, when he took the chair, deafening applause and waving of hats stamped the result with a significance for which Bourke and his friends were unprepared. Dr. Lang trumpeted it in his newspaper as a triumph for "the Tory party" against the emancipists. Yet amongst the respectable portion of society there was no ill-feeling to Bourke himself, whose general kindness and ability were acknowledged even by those who, fearing not only for their own order but for the moral condition of the colony, thus gave vent to their feelings.

The strong sympathy exhibited for Macleay reflected upon one of the most disingenuous acts imputed to Bourke. Macleay, then about seventy years old, had, in 1835, while claiming certain functions for his office, and disowning personal feeling, let fall in Council an expression that it was "not probable that he should be much longer in office." The Governor asked him no questions, but at once informed the Secretary of State that Macleay had "publicly announced the probability of his retirement within a year." Urging that confidence ought to exist between the Colonial Secretary and the Governor, he recommended that Mr. E. Deas Thomson (his own son-in-law), the Clerk of the Legislative Council, should receive the "appointment to this office, which is, I suppose, about to take place."

The secret was kept so well that the first intimation which Macleay received was from a notice in the London 'Gazette' (25th March, 1836), that Mr. E. Deas Thomson had been appointed Colonial Secretary, without any reference to the existing occupant. Macleay wrote to Bourke asking in what situation he was to consider himself with respect to that notice, concluding that so very extraordinary a proceeding with regard to him could not have gone so far without some official communication with Bourke. The reply was not ingenuous. Bourke had not "received any communication from Her Majesty's Government, and was of opinion that under the circumstances Macleay should continue to discharge the duties

of his office." A few days later Bourke received a despatch with Mr. Thomson's commission, and in apprising Macleay of its receipt assured him that his convenience would be consulted, as Lord Glenelg desired, as to the time of actually issuing the commission under the seal of the colony. Macleay respectfully asked for permission to peruse the despatch. His friends were astounded. He had never directly or indirectly resigned, and his health was as good as when he first took office. An acquaintance with the grounds on which Lord Glenelg acted was necessary to enable him to decide upon the course he ought to pursue. On the following day (3rd September 1836) Bourke showed him the despatch, as well as his own, to which it was a reply. Macleay denied that he had ever expressed an intention to resign. (A majority of the councillors agreed with him, and only one construed his words as indicating some future intention of the kind.) Bourke then said that, subsequently to writing his despatch, he had informed his friends in England that he could not carry on the government with Macleay as Secretary, because he associated with hostile persons. Macleay asked for the names of the persons. Bourke said he did not wish to prefer charges, but Macleay must be aware that their opinions differed. Macleay's attitude on the Education, Jury, Marriage-Law, and Post-office questions was discussed as the ground for Bourke's desire to get rid of him, but could not justify it, and Bourke wound up the interview by saying that he would allow Macleay to hold office till the end of the year and no longer. There was no Civil List in those days, and Macleay said: "Your Excellency has power to dismiss me, but I will not resign." Called upon on the 26th December to vacate office, Macleay sent on the 29th a formal protest. His dismissal was the result of misrepresentation of some words used by him in Council, which he was never asked to explain; had Lord Glenelg been cognizant of the facts he would never have sanctioned such an arbitrary dismissal of an officer of forty years' service; Lord Glenelg specially desired that Macleay's convenience should be consulted to the utmost extent compatible with the public interest, and it was compatible with that interest to await the result of a reference to his Lordship. He would not therefore relinquish office which only His Majesty could determine. He

formally asked in what manner he had forfeited Bourke's confidence, and who were his associates of whom Bourke disapproved. Bourke replied that having received His Majesty's warrant he would issue letters patent appointing Macleay's successor on Monday the 2nd January, and that Macleay could see the warrant in the hands of the private secretary if he desired to do so. On the other topics in the letter neither then nor afterwards would Bourke communicate with Macleay. Such a high-handed act done by a man of mild demeanour irritated and astonished many who knew Macleay only by repute. The 'Sydney Gazette,' the 'Sydney Herald,' and the 'Colonist' denounced it. The 'Australian,' prompted by the friends of Bourke, advocated it as a righteous blow to the "virulent, abusive, lying, self-glorifying Tory party" in the colony. His Excellency had "bundled out a few of the officers of State already," and the 'Australian' believed him "wise enough to stretch his power to the utmost." It was not for Bourke's advantage that such language was mixed with citations from Lord Glenelg's despatches which Bourke only could have furnished. Dr. Lang entitled one of his articles in the 'Colonist,' "Remarks on the Governor's manifesto, published in the 'Australian' of January 17th, 1837," and categorically defended Macleay. The 'Australian' had coarsely alluded to Governor Darling, and Lang wound up his remarks by saying: "So many statements must have come from Sir R. Bourke himself that it is impossible not to consider him the author of the manifesto; and as such, we appeal to his candour, how far the gross language used with respect to his predecessor is worthy of a British Governor, a military officer, or of a gentleman." Lang usually had the last word, and was not challenged further. But society in the colony felt itself injured; and the same men who had placed their ban upon Roger Therry now rallied to do honour to Macleay. Six out of the seven non-official members of the Legislative Council, eighty-six out of a hundred and ten magistrates remaining on Bourke's expurgated commission, and hundreds of others whose names might truly be said to represent the intelligence and respectability of the whole community, signed addresses to Macleay. His concluding words in reply were: "I shall now contentedly retire into private life. Yet,

gentlemen, I shall never forget that to your kindness in coming forward on the present occasion I am entirely indebted for that consolation in old age, which I vainly expected that my long services would have secured to me from His Majesty's Government." The only consolation Lord Glenelg subsequently gave him was by approving Bourke's proceedings, "although much regretting that any misunderstanding should have occurred as to Mr. Macleay's intentions;" by restoring to him his pension as former Secretary to the Transport Board, and recommending an addition to it.

The reader will see that although there was general respect for Bourke's good deeds, there was still rankling in the community a consciousness that, like Macquarie, he had sinned in endeavouring to exalt unduly the emancipists and their friends. The episode about Macleay was one amongst a train of events which demand to be recorded if the inner life of the colony is to be understood.

CHAPTER XI.

SIR GEORGE GIPPS.

THE successor of Sir Richard Bourke was a man of different mould. Able and bold, Sir George Gipps never shrunk from enforcing what in his self-confidence he thought to be right. An officer of the Royal Engineer corps he had seen service in the Peninsular war. Capable of thought, vigorous of speech, and incisive with his pen, he had served in a civil capacity as a Commissioner in Canada to inquire into grievances. Apt in diplomacy, he yet lacked the wariness of refraining from a clever saying not essential to the matter. Seeing the goal, he was imperious in driving others towards it, forgetful that all human creatures will not move in the same manner, and that many are more easily led than driven. Thus he occasionally steered upon a rock which a more discreet navigator would have avoided with little loss of time, and much gain of peace and reputation. Pure in moral character he claimed no praise from the good; scorning a want of principle, he would stoop to no device to obtain that of the bad. He was unfamiliar with the arts which politicians practise to obtain support, and to pave the way for their measures in countries where representative institutions are moulded by public opinion. In time of trouble he might as dictator have earned that praise which he would not stoop to make his object. In carping times of criticism he offended the spirit to which he would not yield, but which he might have weakened or neutralized by politic courses without any sacrifice of principle. He had in Canada recommended the establishment of District Councils, and he arrived in New South Wales with predilections which seemed to assume that as in pure mathematics principles do not vary with circumstances or climate, so legislation beneficial in one country must necessarily

be equally appropriate in another. Had he appreciated the prudence of Walpole, or the instincts which Walpole shrunk from offending by taxation which seemed imperious or arbitrary, he might have avoided an opposition which his rigid course at one time rendered almost unanimous. The career of the last Governor, who exercised his functions with the aid of a nominee Legislature, and who had to continue to perform them in the face of the popular tide which flooded the political arena on the introduction of the representative principle, would be interesting under any circumstances, and becomes doubly so when the man, like Sir George Gipps, was notably able. The repeated postponements of amendment of the Constitution Act left him in a peculiar position. Resolute though he was, it was anomalous that he should be made a legislator for the future, not knowing how soon his powers might be curtailed. He early looked round for materials to strengthen his nominated Legislature, and recommended that William Wentworth should be placed in the Council. How the intention was frustrated may be told in few words. When in 1839 the English Government determined to arrest the evils arising from lawless occupation in New Zealand, by making a treaty with the chiefs whose sovereign rights had been officially recognized, Captain Hobson was sent to New Zealand to negotiate, but he was wisely placed under the control of Sir George Gipps, who promptly proclaimed that no titles to land on the part of alleged purchasers would be recognized as valid which were not derived from or confirmed by the Queen. In 1840 Gipps proposed a Bill to sweep away the foul claims which the New Zealand Company and others put forward, and which were comprehensive enough to absorb more acres than were contained in the islands. Fair transactions were to be recognized to a limited extent. William Wentworth was amongst the claimants. In most cases to tell what Wentworth did was to tell of something in which the hopes and fears of three-fourths of the dwellers in Australia were concerned. In this matter he did not represent their aspirations. He, with others, opposed the Bill. He pleaded his own cause at the bar of the House, whose deliberations were, until the time of Gipps, unknown to the public. In 1838 the doors were thrown open by the new Governor, and the press reported members' speeches. For

nearly two days Wentworth spoke. He averred an equal right on the part of a Maori to sell to him or to the British Government. He denounced the proclamation of Gipps as invalid, and repugnant alike to English and to international law.

Mr. Busby, a claimant, appeared for himself also. For other claimants two leading barristers, Mr. (afterwards Sir) William A'Beckett and Mr. Darvall, pleaded. The Governor then addressed the Council in support of his Bill. He declared that all the jobs done since the days of Walpole if combined in one would not equal the one Wentworth asked him "to lend a hand in perpetrating;—the job, that is to say, of making to him a grant of twenty millions of acres, at the rate of one hundred acres for a farthing." Urging the Council to prove their regard for the Crown and the interests of the subject, he said:

"For myself, in respect to this occupation of New Zealand by Her Majesty, I may I trust be permitted to exclaim as did the standard-bearer of the tenth legion when Cæsar first took possession of Great Britain—*Et ego certe officium meum, Reipublicæ atque Imperatori præstitero;* fearless alike of what people may say or think of me, I will perform my duty to the Queen and the public."

The Governor's Bill was passed. Surly and indignant, Wentworth threw up his commission as a magistrate, and Sir George Gipps withdrew his recommendation that Wentworth should be placed in the Council. What might have been the result if Wentworth had become a Councillor with Gipps, is as interesting a problem for Australian declamation as it was for Italian youth to discuss the probable fortunes of the Romans if the great Carthaginian had earlier fluttered them in Rome. *Dis aliter visum.* Throughout the career of Gipps, Wentworth was his implacable opponent. A brief review of the colonies between the departure of Governor Bourke and the passing of a new Constitution Act in 1842 in England, may precede an inquiry into the particular acts of Gipps. The character of the population of the colonies was rapidly metamorphosed. Free immigration to New South Wales promised to overwhelm the emancipated class. Free servants were sought for, and were superseding convicts on farms and households, as well as amongst the artisans in towns and villages. The component parts of street gatherings were

changed, and there was a corresponding alteration in their aspirations and feelings. The struggle of the emancipists under Macquarie, and his patronage of them, had aimed at the recognition of their right as emancipists, and under that name, to the freest enjoyment of all that the colony could afford in the way of place or power. Free immigrants were derided as impertinent interlopers. Unfortunate associations in his youth had made even Wentworth a champion of the class favoured by Macquarie. In his description of New South Wales he had, as early as in 1819, claimed for them the right to become "jurymen, magistrates, and legislators." This would revive latent sparks of virtue and "electrify the mind, when all other applications would fail to rouse it from despondency and lethargy. And shall not this *sole efficacious remedy* be administered because a set of *interlopers*, persons in no wise connected with the purposes for which this colony was founded, wish to monopolize all the respectable offices of Government, all the functions of emolument, power, and dignity to themselves?"[1]

After Commissioner Bigge's report in 1822, later editions of Wentworth's work were as uncompromising in tone. Macquarie's measure of "raising to situations of trust and dignity some of the most deserving class of the emancipists" was justified as "a great and salutary change."

"Until the accession of Governor Macquarie the great body of the people, I mean of such as had become free, scarcely possessed any privilege . . the whole power and nearly the whole property and commerce of the colony were in the hands of the few who had risen to ascendancy at the expense and to the evident detriment and oppression of the community at large . . . at the prosperity and importance of this faction (for such is their proper appellation), Macquarie, seeing that the power which they had attained was subversive of the very end for which the colony itself had been instituted, levelled many a deadly blow."

If such were the utterances of the eloquent leader, the coarse sayings of the rank and file may well be omitted from the page of history. Dr. Bland, already mentioned in these pages, added

[1] It is fair to remark that Wentworth proposed to render a relapsed criminal ever afterwards incapable of election. The consequence of colonial crime was to be perpetual.

the weight of his colonial repute to the demands of the party. But a change had come over the land. It was the hope of supremacy which had impelled the emancipists to clamour for equal rights, while they were, with their artificially-replenished sources, in Wentworth's words, "the great body of the people." With rapid immigration that hope vanished. In 1841 an emancipist would, if he could, shroud his peculiar condition under a veil. Some of them were members of associations to procure enlarged political privileges; Wentworth was ever in the van demanding representative institutions and constitutional taxation; but the emancipist party, *eo nomine*, put forward no special claims, and its members were not proud of their title. They swam with the stream. But they were rapidly excluded from society. There were sons of settlers or officers by concubinage in the primitive days, and the station of these modern libertines was ascribed to them according to the class and position of their fathers. They were not more ostracised than they would have been in the Court of Charles II. They were known to people who were not asked, and would have refused, to meet their sinister relations. They went whither their fathers could go. The upper classes, according to Governor Gipps, contained "young men of good family and connections in England, officers of the army and navy, graduates of Oxford and Cambridge, &c.;" the higher officials selected in England, and those of the mercantile community whom they found their equals. Between them and those who were much below them, there was of course a border land in which members of one class met casually members of the other. But an inexorable line separated the emancipists. Macquarie's violent efforts to force them into position, and upon the society of those who shrunk from them, bore bitter fruit long after he was gathered to his fathers. The discontinuance of transportation to New South Wales convinced all thoughtful persons that though the labour problem was to be a severe test, though the loss of gratuitous labour would incommode those who had formerly commanded it—for weal or woe the colony must now assume a similar position to that to which the mother country was hastening. Its criminals must be controlled at home: and when released must be absorbed in some dim regions of the

social fabric. Only a fraction of the convicts survived their wild courses and attained those regions. The emancipist question was extinguished. The class "emancipist" dropped out of consideration. Thenceforth claims were made for the whole body of colonists. The establishment of South Australia which prided itself on its immunity from transportation; the settlement at Port Phillip which made a similar boast (although, until immigrants from the United Kingdom turned the scale, its labourers were drawn mainly from the population of New South Wales and Van Diemen's Land)—tended to strengthen and root deeper the change which had come over the spirit of the colonies. The old hive at Port Jackson might be stung by the taunts of the swarms it had sent forth, but the thoughts of all gradually converged upon a common aim. Immigration of a reputable kind was the one object for all. But before that unity of purpose was acknowledged, efforts were made by Dr. Bland and others to perpetuate transportation. Letters to Charles Buller, M.P., from the Patriotic Association, of which Bland was the "Committee of Correspondence," insisted that "colossal advantages" would result from the "continuance and extension of the present system of transportation and assignment." A petition, adopted at a public meeting, in February 1839, accompanied this strange assertion, and, drawn probably by the same pen, pleaded that "the moral and religious reformation and general welfare of a large body of the criminal population of Great Britain" would be promoted by a continuance of the system which cast that "large body" on the small community in the colony. The labours of the House of Commons in 1837 and 1838, the speech in which Archbishop Whately in the House of Lords in May 1840 condensed the adverse case, produced effects in England which no efforts of the so-called Patriotic Association could countervail. The anomaly of granting representative institutions to a congregation of convicts was more apparent to Englishmen than to that section of colonists which Macquarie had fostered.

Mr. Buller told the fervid Bland that all parties agreed to withhold free institutions from New South Wales while it remained a penal colony. It was "idle to make any effort for the establishment of representative institutions in New South Wales so long as transportation to it continued." Sir John

Jamieson as President, Wentworth as Vice-President, and Bland as Committee of Correspondence, did not shrink from expressing their regret at "the error on which this determination is founded."[1] Again they argued against it; but Wentworth, more a politician than a social speculator, admitted that transportation must be abandoned rather than representative institutions should be deferred. There were many colonists who feared financial ruin from the sudden withdrawal of forced labour, but were so convinced of the moral evils it entailed that they took no part in the struggle for its continuance. If they did not welcome anticipated poverty they put their trust in Providence for unforeseen security.

As the social blot passes from our page a word as to the moral aspect of society is appropriate. There had been ever some circles where piety prevailed; and they had acted like leaven in the community, even amidst the dissipation and debauchery of the early days. Not in high place only, as among the Macarthurs and Kings, but in humbler grades there were earnest Christian families who, like Jonadab, were fearless to do right. The language of the soul ascended from rude huts as well as from places of worship where official chaplains presided. The Government had always enjoined religious observances; and the standard of morality, if at any time low, was yet felt to be indebted to the Government for loyal support in improving it.

The education of their children was an anxious task for many mothers. Not instruction only in what was good, but seclusion from what was corrupting "filled their minds." Many, at one time all, tutors had been convicts, and their influence was dreaded. Even if they were at heart reformed, might not even the very respect for reclaimed offenders lead to light consideration of crime so easily put off with its consequences? Was not Macquarie's conduct provocation to such loose ideas?

Heroines of domestic life taught themselves strange languages in spite of various pressing avocations, in order to be able to

[1] They were sanguine enough to tell Mr. Buller that they attributed the errors in England to the accident which deprived them of his aid in 1837 and 1838. He had been appointed in room of Mr. Bulwer, but he had accompanied Lord Durham to Canada. His absence was fatal. In closing their correspondence with him in 1841, they thanked him for his "zealous and able advocacy."

teach their children, and thus be independent of doubtful aid. Some sat by their side throughout the hours of lesson so that the teacher could convey no poison to his pupils. Such heroism had reward even in this life, in the success of their efforts, and the affection of their children.

Up to this period colonists aimed at creating homes for themselves and their descendants. The class which desired to make fortunes and return whence they came, had not sprung into existence. Most of the high official class became permanently colonists. Families which had amassed landed estates hoped that at some distant time their heirs would be great in the land; but no man went about to heap riches together and go elsewhere to enjoy them. These things became the desires of later times. Many causes conspired to retard their growth. The management of sheep was comparatively expensive in the settled districts. They were kept in small flocks of a few hundreds, and shepherded daily to and from the pasture. In hilly country, even thus tended, there was risk of scattering and slaughter amongst a flock by the rushing of wild dogs upon them as they fed. The open plains of the interior, where larger flocks and larger herds of cattle could be managed by fewer hands, were only beginning to prove their superiority. It was a land of toil; but except under exceptional conditions it was nevertheless a land of plenty. The homes of the labourer and the artisan were stored with profusion elsewhere unknown. The abodes of the gentry were not halls of idleness, but in some there were pleasures and conversation worthy of the most refined of the homes of England.

The year 1838 saw the first club formed in Sydney—"The Australian Club." It was formed to "promote social and literary intercourse" of colonists, "and for the general interest of the country gentlemen"—and it fulfilled its purpose well. It had no politics. It freely invited travellers to its fireside, and formed a bond of union with all gentlemen visiting the colony. As men of all shades of opinion frequented it, it could not become an arena for special or political intrigue. The common sense of members excluded all party-cabal. In its earlier days though the admission of a gentleman could be predicated with certainty, the club drew a sharper line than was adhered to in later times,

and its standard in many ways was higher of old than after the discovery of gold. Social and commercial changes translated men from one pursuit to another, and a man who was born and had behaved as a gentleman was not deemed unworthy of the name because he had failed to keep or to gather money. If his necessities compelled him to adopt a different but respectable mode of living his club still knew him as of yore. The occupation he followed being thus recognized as compatible with membership, others who pursued it became eligible if otherwise tolerable, and the men who founded the club in 1838, when they looked at the list of members forty years afterwards, were astonished at the changes wrought. In one colony a man has survived an evil reputation of more than a quarter of a century, and has been surprised at the facility with which he has been admitted within the precincts so long forbidden to him. Formed mainly "in the interest of the country gentlemen," when hotels in Sydney were not commodious, the Australian Club was provided with bed-rooms. In other respects it aimed at the position of a leading London club. The exception by which it was made to partake of the character of an inn was continued after the necessity had passed away. Those who resided in the building were unwilling to retire to hotels, however convenient, while they could persuade their fellow-members to purvey for them. It was comfortable for a country member to know that when compelled to visit the metropolis he had a home of his own. The *vis inertiæ* of a body, seldom collected except on stirring occasions, kept in existence that which was once essential to the club if it was to be of use to country gentlemen; but the reasons for which, after a few years, had passed away.

At Melbourne the colonists of 1839 founded the Melbourne Club on similar principles to those of the Australian Club[1] in Sydney, and throughout Australia such clubs now exist.

For many years admission into the colonial clubs was regulated under conditions as precise as those which prevailed in leading clubs in England; but social disturbances which

[1] No vicissitudes have even temporarily overthrown either of these clubs. Losses, and results of careless management, have vexed the minds of members, but the dissolution of the institutions has never been seriously entertained. Other clubs have been formed in both colonies.

followed the discovery of gold, and in some degree the changes wrought by political institutions which seemed to make Governors careless about the characters of those to whom they extended their hospitality, ere long relaxed the strictness with which clubs guarded the entrance to their portals.

The financial prospect had become gloomy before the Constitution Act of 1842 gathered representatives of the people to consider it. It is almost needless to say that the bulk of the exports was wool. The immigration of capitalists (after Bigge's report had called attention to Macarthur's enterprise) had covered an enormous territory with flocks and herds, under the reigns of Brisbane, Darling, and Bourke. Within six years of Batman's enterprise nearly a million and a half of sheep had been put upon the pastures of Port Phillip.

Between 1826 and 1841, although two severe droughts had occurred, the population of New South Wales had been trebled, the exports had become tenfold, the imports threefold, and the revenue sevenfold. But storms were impending, and their influence already disturbed the atmosphere. The facilities given by the banks had inflated prices. The sudden withdrawal of convict labour paralyzed the labour market. Urgent demand for labour prompted efforts to increase immigration. Land was largely sold, and the proceeds were lodged in the banks. There seemed to be a plethora of money. It was not perceived that to clutch at labour, to secure land which otherwise a stranger might grasp, colonists had plunged so deeply into obligations that they became the *adscripti fiscis* of the banks. The banks, encumbered with cash, freely re-issued in discounts the proceeds of the land sales, the original purchase-money at those sales being represented by securities held by the banks themselves. To meet expenditure, and especially the demands of the bounty system of immigration, the Government withdrew their deposits rapidly. The banks increased their rates and restricted their discounts. The money market declined, and there were symptoms, by no means doubtful, of general stagnation and distress. The colony shrunk from inflation into a state of exhaustion. Its true wealth was then in its flocks and herds, but the owner could not raise money upon them. Millions of sheep were, moreover, depastured in the squatting districts. Not

only bankers, but merchants and commission agents who had advanced money on the personal security of the borrower, were pressing him hard. The tide was ebbing long before the shore became desolate.

In 1840 the British imports to New South Wales were	£2,200,305
In 1841 they had declined to	1,837,369
In 1842 (owing to causes in operation in 1840 and 1841) they had fallen to	855,774

Nor was it only in the older settled districts that these difficulties were apparent. The imports into the new district of Port Phillip sank in like manner; and it was not until 1847 that they rose to the maximum of 1840.

There were numerous portents of evils to come. In an ancient community the proportion of the population which interests itself in fiscal and administrative subjects may be often comparatively small. In New South Wales, where there was no realized wealth, and consequently no leisure class, every man on whose energies the prosperity of the colony depended, took an active interest in public affairs. He read; he attended meetings.

The Legislature, however, was entirely nominated by the Governor. Yet even his nominees made earnest protests against saddling the colony with the whole of the police and gaol expenditure. All eyes were intent upon this as a wrong. But Lord John Russell had been staunch. The British taxpayer was not called upon to meet any part of the expenditure. The protests of Legislative Councillors were discarded as nothing worth. Nay, he retorted upon them. Not allowing for the fact that the occupation of wild lands must augment expenses in a more rapid ratio than in a settled country, he declared that the financial embarrassments reported to him by Gipps in 1839 were "not produced solely or even mainly by the transfer of the expense of police and gaols" to the colonial estimates, but were due to the improvidence of the colonists in increasing their establishments. Again, when Gipps reported the withdrawal of his District Council and Highway Commission Bills in 1840, Lord John regretted their defeat, and desired that they should be re-introduced without alteration. "When you again introduce them, I wish you to allow them to be formally rejected, rather than mutilate or withdraw them."

Such was the position of the Governor. The attitude of the colonists outside of the Legislature was represented by Wentworth, who, whenever he chose to shake off a careless indolence of conscious strength, was known to be tenacious as a bloodhound, and whose influence over any large assemblage of his countrymen had never failed. It was believed that the British Government intended to amend largely the existing constitutions in Australia, but it was thought that the confidence reposed in Sir George Gipps would render his voice all powerful in shaping the course of legislation. The land question was undetermined, but for a time the able Governor controlled the mind of Lord John Russell, wavering between schemes old and new. The stronger Lord Stanley superseded Lord John Russell in 1841.

The employers of labour in Van Diemen's Land were not threatened with immediate withdrawal of convicts, but they had troubles. The weak hands of Franklin were unable to grasp the reins so firmly held by Colonel Arthur. The colony suffered for a time from emigration to Port Phillip and the concurrent outflow of capital. Those who remained were urgent in petitioning for free institutions, and were to be rewarded at the same time and manner with New South Wales, by the new Constitution of 1842 (5 & 6 Vict. cap. 76). In that year also Lord Stanley took South Australia under Government control, and the powers of Commissioners ceased to exist there, in fact, as they had virtually ceased to operate from the time that Captain Grey had superseded Colonel Gawler as Governor. A new land system was imperially put in force throughout the Australian colonies at the same period. It was supposed to embody Wakefield's views, but it satisfied neither his friends nor his foes. It crystallized only so much of his opinions as had been popularly received.

The jobbing in lands in and near Adelaide had dashed the hopes built upon his "sufficient price," but the necessity to create an immigration fund was recognized, and no other fund than one derived from sales of Crown land was thought of. Thus what Wakefield called an accident, was in the minds of most persons perverted into the essential principle of his system, and the essence of his plan was never really proved by experiment, except to the extent that it was partially and successfully tested in the provinces of Canterbury and Otago in New

Zealand. Western Australia at the date under consideration was prostrate under evils which the Wakefield theory declared to be exactly such as would necessarily be brought about by the manner in which the lands had been appropriated there.

The dearth of labour in that sterile territory had already constrained some inhabitants to strive to obtain convict servants. The majority refused to petition for them. They struggled against nature. Their wheat crops were destroyed by a moth in 1840. They sinned against science, for they had endeavoured to build a polity in defiance of political laws. But for many years they shrunk from the disgrace of receiving criminals. How powerless they were to help themselves may be inferred from the fact that out of a total expenditure of £267,098, between the foundation of the colony and March 1840, the colonial revenue amounted only to £32,000; the British taxpayer having, in commissariat and salary expenses, contributed £235,098.[1] The population of the several colonies was estimated in 1841 as follows :—

	MALES.		FEMALES.	TOTAL.
New South Wales proper	79,024		40,094	119,118
District of Port Phillip[2]	8,274		3,464	11,738
Van Diemen's Land	Free 19,362 Bond 14,463	33,825	Free 14,116 Bond 2,275	16,391	50,216[3]
South Australia	8,440		7,060	15,500
(Of whom only 6,000 of the total were in the rural districts.)				
New Zealand				5,000

The exports and imports were as follows :—

	EXPORTS.	IMPORTS.
From New South Wales ...	£823,092	£2,163,59 9
„ Port Phillip	200,305	364,399

[1] 'New Holland.' Thomas Bartlett, Assistant-Surgeon, 51st Light Infantry. Longman, &c. London: 1843. Mr. Bartlett quotes from an official report of 1840.

[2] There is a discrepancy in returns concerning Port Phillip in 1841. The census laid before the Legislative Council in New South Wales contains the figures quoted in the text. In Mr. Hayter's 'Victorian Year Book' (1874), the population of 1841 is given as 14,391 males, and 6,025 females. The export and import figures agree.

[3] The military and their wives (1,234 in all) and the few aborigines are excluded from these figures, which are to be found in the English Parliamentary Papers, 1849, vol. xxxiv.

	EXPORTS.			IMPORTS.
From Van Diemen's Land	£630,501	...	...	£851,981
„ South Australia ...	104,647	...	...	392,995

The abnormal condition of the trade is shown by the fact that of the exports (exceeding £100,000) only £40,561 were local products, £35,485 being wool.

	EXPORTS.			IMPORTS.
Western Australia in 1840	£1,507	...	...	£847
New Zealand „ „	10,836	...	...	85,062

It was but for a brief period that Sir George Gipps controlled New Zealand. It would have been well if his authority had been prolonged. While it lasted he passed an Act which extended to New Zealand the laws existing in England, and he checked the exorbitant pretensions of the New Zealand Company and other claimants. Lord John Russell, however, marred the good effects of Sir George Gipps' control. Before Lord Stanley became Colonial Secretary New Zealand was created a separate colony.

Some of the early complications attending the relations of the Maoris with the colonists pouring into New Zealand were shown by an Act passed in Sydney in 1840, to fix the customs duties in New Zealand. They were to be charged only after July of the ensuing year. There was to be no duty on tobacco until 1843; and no duties already paid were to be refunded.

In 1842 another Act was passed, permitting the free importation of all articles grown in New Zealand and in Van Diemen's Land, with the exception of spirits; which arrangement was in the same year reciprocated in Van Diemen's Land by Governor Franklin. After its severance from New South Wales, New Zealand has, however, a distinct history, and may therefore pass from these pages. It was necessary to glance at the general condition of the colonies at this epoch, because in succeeding pages it will be convenient to review it not according to the terms of office of Governors, but in general chronological periods. With the introduction of representative institutions by Imperial Statute in 1842, the impress of a Governor's character upon the fortunes of the principal Australian colonies in great measure passed away. A Governor could still do much, but he could not rule. His functions were such as in emergencies only a wise or strong man could fulfil. Nevertheless, it was chiefly by tact and

influence unseen by the public that in general affairs he was able to benefit the community.

Although it is convenient to divide into chronological periods the Australian narrative, instead of recording in separate sections the all-important sayings and doings of each Governor, it is also convenient to adhere to the plan, already followed, of condensing at the commencement of each period the geographical discoveries it embraces. By this means, if new places come into notice in the general history, their situation is apprehended. The name of Ludwig Leichhardt is one of the most eminent in Australian exploration. His unexpected return in 1846, his tragic and unexplained disappearance in 1848, combined to make his name a household word. A Prussian traveller, he was introduced in the best society in the colony. When he visited a country estate his time was occupied in botanical and geological researches, in which the avocations of his hosts prevented them from joining, but "the doctor," as he was familiarly styled, was the most welcome of guests. A kindly and simple demeanour commended to favour a brave and devoted scholar of nature. Leichhardt had made many excursions, when a desire to discover an overland route from the northern districts of New South Wales to Port Essington seized upon the public mind and attracted him to the task.

In its first session the Legislative Council of 1843, containing twenty-four elected members, on the motion of Dr. (afterwards Sir Charles) Nicholson appointed a committee to inquire into the practicability of an overland route to Port Essington. The chairman (Nicholson) reported favourably. The Governor, Gipps, was requested to place £1000 on the estimates. He agreed with the Council in thinking the attempt desirable, but "without the knowledge of Her Majesty's Government," shrunk from the hazard and expense. He urged Lord Stanley to approve. He transmitted the report of the committee with the evidence. The Surveyor-General, Sir T. L. Mitchell, had recommended that Fort Bourke on the Darling river should be the starting-point, and volunteered to conduct the party. The route proposed would, he said, combine advantages for all the colonies. Adelaide and Melbourne could join it, and by its means, through Sydney, New Zealand would be benefited.

Other persons suggested that the Moreton Bay district should be the point of departure. The committee approved of Mitchell's scheme. Gipps feared that it was less practicable than an expedition from Moreton Bay, waited on by a vessel with which they could communicate at Halifax Bay, and which would afterwards meet them at the Gulf of Carpentaria, and at Port Essington. But the estimated expense, four or five thousand pounds, had precluded such an expedition, to command which both Captain Sturt and Mr. Eyre had tendered their services to Gipps when, by the publication of one of his despatches, they learned that he would promote such an exploration. Lord Stanley did not withhold his assent to the grant asked for, whenever Gipps might think that the colonial funds could afford it; and in 1845, after Leichhardt had started, the Legislative Council again prayed that a thousand pounds might be set apart for the purpose. Sir G. Gipps consented to place such a sum at Sir Thomas Mitchell's disposal, if he were still willing to engage in the enterprise. That officer immediately organized the expedition, in which he traced the Victoria or Barcoo river. But while despatches were being exchanged to and from the *ultimos Britannos*, Leichhardt had been at work. Without aid from the Government, his friends contributed to his outfit. His own slender means were thrown into the stock. At Brisbane, in the district of Moreton Bay, land sales had been held in 1842, and free settlers were invited. Before that date flocks and herds had been taken to Darling Downs by squatters whom Leichhardt described as a "class principally composed of young men of good education, gentlemanly habits, and high principles, and whose unbounded hospitality and friendly assistance I had previously experienced during my former travels through the district." Overwhelmed with presents, many of which he was unable to carry away, the traveller, having ascended the cordillera and passed through Darling Downs, took his departure on the 1st October, 1844, from Jimba, near the 27th parallel of south latitude. "We launched buoyant with hope into the wilderness of Australia. Many a man's heart would have thrilled like our own, had he seen us winding our way with a full chorus of 'God save the Queen,' which has inspired many a British soldier—ay, and many a Prussian too—with courage in the time of

danger." He had left Sydney with five companions. Four volunteers were added at Darling Downs; but two of the party turned back in a few weeks. He had two native blacks, Charley and Harry Brown, who, as usual, by their skill in hunting formed the mainstay of the expedition in procuring food. Charlie was a native of Bathurst. Brown was from the Hunter river, near the sea. Dr. Leichhardt's enthusiasm in botanical and geological researches in some degree cramped his fitness to manage his fellow-creatures, and he had slight disagreements not only with the two natives but with others of the party. Charley and Harry Brown did not respect him with the feudal affection which they entertained for some of their English friends who knew their customs.

How useful they were may be read in Leichhardt's Journal.[1] On one occasion they shot sixty-seven flying foxes. Another day they procured forty-two. Brown irritated "the doctor" by long absence in bringing the cattle back to the camp, but pacified him by producing four geese as the result of the morning's delay, and by shooting three more in the afternoon. Fifteen ducks and one bustard on another day spared the carried food. One morning Charley shot two emus. Nor was it only as sportsmen that the despised native aided the white men. In the morning Brown made the tea. Charley went for the bullocks, his keen perception being never at fault in tracking; and, in untrodden lands where grass and herbage abounded, the task was easy. On pitching the camp after the day's march, during which the aptitude of the natives was shown in divining the smoothest way, and game was also secured if possible, the doctor made the fire, Brown went for water, Mr. Calvert weighed out the regulated allowance of food, and Mr. Gilbert took his gun to collect birds, as specimens and for food. In the evening Mr. Gilbert, rich in memories of travel, beguiled the time. Songs by Brown and general conversation broke the far silence of the forest, until the period of rest, when others in their tents, and Leichhardt and the blacks in the open air, sought sleep. Thus, the simple-minded but heroic Leichhardt traversed several affluents of the Condamine river near their sources, naming hills and rivers as he passed Expedition Range. Brown pointed out

[1] Published in London: 1847. T. and W. Boone.

a comet, and Leichhardt named the stream where they were camped the Comet. The Mackenzie was called so after Leichhardt's friend, Sir Evan Mackenzie. Passing Peak Range, the Isaacs, Suttor, and Burdekin rivers, he named the Lynd after one of his most cherished friends; and the Mitchell, into which it flowed, after Sir Thomas Mitchell, the Surveyor-General. Deviating from the Mitchell, which trended too much in a northerly direction for his purposes, he travelled westward to the shore of the Gulf of Carpentaria, near 16 S. latitude, having derived from the cordillera and its spurs and streams, supplies of water and of game, far different from those obtained by explorers in the western division of Australia at later dates. Having reached the tribes who had frequently encountered Malays, Englishmen, and Dutchmen, on the coast, he ought to have been cautious; but, inoffensive himself, he did not reflect that others might have provoked vengeance which he might feel. There was no risk of bloodshed while he was in regions where no white man had trodden before him. Up to that date, 27th June, all the natives seen had been friendly. On the 27th June, Charley saw some blacks apparently intent upon spearing the cattle. He fired his gun and scared them from their camp. As it was observed that the women had retired previously, mischief should have been guarded against, for it was the habit of Australians to send the women to some safe place before risking conflict with intruders. On the 28th, after the evening converse, Leichhardt had fallen into sleep when he was roused by cries for help from Messrs. Calvert and Roper. The natives had assaulted the travellers with a shower of spears which killed Mr. Gilbert, and wounded Roper and Calvert. The two blacks called for percussion-caps, and when Leichhardt found them, fired amongst and scattered the attacking tribe, though not before Roper and Calvert had been attacked with clubs. Blood was left on the tracks of the fliers, and wailings were heard as if for the lost. For two days Leichhardt tended his wounded friends, and before leaving his camp buried Mr. Gilbert, "reading the funeral service of the English Church over him." To escape the neighbourhood a long march was made on the third day, and at lat. S. 16·27, the east shore of the Gulf of Carpentaria was seen and hailed with delight. Making a circuit round

the head of the Gulf, Leichhardt gave names to commemorate the names of friends or patrons. The Nicholson river, which he crossed at long. 139, lat. 18·10, he christened after Dr. William Alleyne Nicholson of Bristol, "whose generous friendship had not only enabled me to devote my time to the study of the natural sciences but to come out to Australia." The Macarthur river near the Pellew Islands was so called in acknowledgment of the liberal support accorded to the expedition by James and William Macarthur of Camden Park. On the 1st October, 1845, twelve months after his plunge into the unknown, Leichhardt was laboriously threading his way through "a wretched country of cypress-pine thickets alternated with scrubby, stringy-bark forest, acacia, and tea-tree thickets." The oxen were at death's door from continuous work. Three horses were drowned (21st October), and Leichhardt was compelled to abandon part of his botanical collection. "Tears were in my eyes when I saw one of the most interesting results of my expedition vanish into smoke." His companions' sympathies were at this time sharpened in a different manner. Food was terribly needed. On the 19th of October the two natives shot fifty-one ducks and two geese, which were devoured in three meals. On the 31st October forty-two flying foxes; on the 13th November sixty-seven more were shot. The travel-worn beasts of burden died and were eaten. Boiled green hide was a dainty. The ammunition was disappearing. It was fortunate that as the travellers became exhausted the natives whom they encountered were found to be friendly. Yet there was nothing in the aspect of the travellers to inspire respect. Their apparel was as scanty as their food. Even in September it was thus described: "The few shirts we had were so worn and threadbare that the slightest tension would tear them. To mend the body we had to cut off the sleeves, and when these were used, pieces were taken from the lower part of the shirt to mend the upper. Our trousers became equally patched, and the want of soap prevented us from washing them clean."

In this plight two months' wearing labour carried them from the Gulf of Carpentaria through rocky sandstone gorges and over precipices to the Alligator river[1] in Van Diemen Gulf,

[1] By a typographical error in a map it was for some time supposed that

and on the 26th November, Charley the native returned with a whole tribe of his sable kin, anxious to show that they were acquainted with the English and desirous to be friendly: though the patois they used was unintelligible. They piloted the travellers through a swamp and left them.

On the 2nd December "a fine native stepped out of the forest with the ease and grace of an Apollo, with a smiling countenance, and with the confidence of a man to whom the white face was perfectly familiar." Others followed, and it was found that they could speak English. "We were electrified—our joy knew no limits, and I was ready to embrace the fellows, who seeing the happiness with which they inspired us, joined, with a most merry grin, in the loud expression of our feelings." Guided by their new friends, the explorers reached the settlement at Port Essington, and were kindly received there by Captain Macarthur the Commandant. Leichhardt thus described his feelings: "I was deeply affected in finding myself again in civilized society, and could scarcely speak, the words growing big with tears and emotion; and even now, when considering with what small means the Almighty had enabled me to perform such a long journey, my heart thrills in grateful acknowledgment of His infinite kindness." A schooner, the 'Heroine,' transported the travellers to Sydney, where an ovation awaited them. A petition[1] to the Legislative Council pointed out that "within the two years over which official proceedings had extended," Leichhardt had "with five companions, and without any assistance pecuniary or otherwise from Government, successfully prosecuted the expedition." Fifteen hundred pounds were raised by subscription; the Legislature voted a thousand pounds as a gratuity; and the glowing words of the bestowers added a value to the gifts which were distributed to each member of the expedition. For the two natives fifty pounds were lodged by the Government in the Savings' Bank. To Leichhardt fell the lion's share.

When the Leichhardt Testimonial Committee publicly presented their address to him on the 21st September, 1846, he

Leichhardt attributed a height of 3800 feet to these high walls. But the text of his journal did not sanction the error.

[1] Votes and Proceedings, New South Wales Legislative Council, 1846.

was already bound for a fresh expedition. The Speaker of the Legislative Council, Nicholson, presented the testimonial, commenting on the smallness of Leichhardt's party, the hardships endured, and the scientific, social, and economical results which must accrue from the discovery of so boundless an extent of fertile country. He alluded also to the fact that Sir Thomas Mitchell was then absent on an expedition in the interior. Leichhardt's terse reply may be given in full.

"Mr. Chairman and Gentlemen,—I thank you for the munificent gift with which you have honoured me—I thank you for the congratulations of the past—for your kind wishes for my approaching expedition. I feel the more the weight of your generous liberality, as I am conscious how much your kindness has overvalued my deserts; but I shall try to render myself worthy of it; and I hope that the Almighty, who has so mercifully taken care of me on my former expedition, will grant me skill and strength to continue my explorations, and will render them equally successful and beneficial to this colony. May His blessings attend the generous people who have shown, by the honours they have done me, how great an interest they take in the advancement of discovery."

Crowds came round him as friends. He told an old companion that his acquaintance was claimed by so many that he was afraid to seem ignorant of any one he met. The Royal Geographical Society awarded him a gold medal, and the French kindred Society followed the example. His next expedition was fruitless. He meant to cross the continent from east to west. He took quantities of live stock. Rainy weather brought fever and ague to the whole band; and after gallant struggles against disease and weakness, they were driven back discomfited, having done little more than revisit the portion of country between Darling Downs and the Peak Range which had been explored on the previous journey. On returning, Leichhardt heard that Sir Thomas Mitchell had found fine pastoral country (Fitz Roy Downs) at the sources of the Maranoa. The new pastures were separated from Leichhardt's first track only by one dividing range, and with the remnant of his forces and supplies, Leichhardt determined to connect the two lines of discovery. He travelled westward to the Cogoon river, not far

from the Fitz Roy Downs, and found (so rapid was the extension of settlement) a cattle station on one of the numerous water-courses which join the Maranoa. This was in the end of 1847.

Early in 1848 he had equipped another small party consisting of himself, Mr. Hentig, Mr. Classen, Donald Stuart, Kelly, and two natives. His supplies were scanty. His object was to cross the continent to the west. He expected that two years would be absorbed in the journey. He wrote (3rd April, 1848), his last (received) letter from the Cogoon river. He extolled the Fitz Roy Downs, whose discoverer, Mitchell, had not exaggerated their beauty. His last words were: "Seeing how much I have been favoured in my present progress, I am full of hopes that our Almighty Protector will allow me to bring my darling scheme to a successful termination." His plan was believed to be to pierce straight to the west, and if foiled by Sturt's desert, to diverge northwards, and, if necessary, to the rivers of the Gulf of Carpentaria. Nothing more was heard of him or his companions. They launched into the waste, and whether they perished by famine, thirst, disease, or violent death, is absolutely unknown to man. Various expeditions were fitted out to ascertain their fate, but nothing definite was discovered. At one time a tree marked L on the Barcoo river was supposed to designate one of his camps; but other trees similarly marked were found by himself in 1847 at the Cogoon, and whatever the letter denoted there is nothing to prove that it was carved by Leichhardt or his party. Close on the heels of nearly all Australian explorers, straggling station-seekers pushed on, and frequently marked trees. For more than a quarter of a century, every relic, whether of human bones, fragments of pack-saddle, or rusty iron, discovered in the interior, has been scanned curiously as if connected with Leichhardt.

Another generation succeeded, and as his name receded into the dim past, the eager quests of modern desires banished it from most mens' minds; but a natural and touching lyric by his friend Lynd still keeps his memory green. Written in 1845, when Leichhardt was supposed to have perished on his journey to Port Essington, its significance was destroyed for a time by his return, but was soon to be mournfully renewed. Though the lines are found in almost all collections of Australian poetry

they well deserve a place in Australian history, and an early friend of Leichhardt may feel that their inclusion will not be ascribed to a vain partiality for the man.[1]

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[1] "YE who prepare with pilgrim feet
Your long and doubtful path to wend,
If—whitening on the waste—ye meet
The relics of my murdered friend,
His bones with reverence ye shall bear
To where some mountain streamlet flows:
There, by its mossy bank prepare
The pillow of his long repose.

"It shall be by a stream whose tides
Are drunk by birds of every wing;
Where every lovelier flower abides,
The earliest wakening touch of Spring.
Oh! meet that he, who so caressed
All-beauteous Nature's varied charms,
That he—her martyred son—should rest
Within his mother's fondest arms.

"When ye have made his narrow bed
And laid the good man's ashes there,
Ye shall kneel down around the dead,
And wait upon your God in prayer.
What though no reverend man be near,
No anthem pour its solemn breath,
No holy walls invest his bier
With all the hallowed pomp of death!

"Yet humble minds shall find the grace,
Devoutly bowed upon the sod,
To call that blessing on the place
Which consecrates the soil to God.
And ye the wilderness shall tell
How—faithful to the hopes of men—
The Mighty Power he served so well
Shall breathe upon his bones again.

"When ye your gracious task have done,
Heap not the rock above his dust;
The Angel of the Lord alone
Shall guard the ashes of the just.
But ye shall heed with pious care
The memory of that spot to keep;
And note the marks that guide me where
My virtuous friend is laid to sleep.

That the hope of Lynd can ever be realized is now almost beyond bounds of possibility; but while any dwellers in Australia sympathize with the good men of the past the names of Leichhardt and Lynd will be inseparate. A large district in the colony now rejoices in Leichhardt's name. The whole land is the memorial of him who did not find in it a grave.

Sturt's desert has been mentioned, and the name of Sturt ranks second to none in the memory of those who knew him as an explorer. His journey with Hume to the Darling, and his boat expedition on the Murrumbidgee have been recorded. In 1843, being then Surveyor-General at South Australia, he volunteered to conduct an exploring party. Lord Stanley at the Colonial Office, and Sir George Grey in the colony, encouraged the project. The enthusiasm which in 1840 hoped to waft Eyre to the centre of Australia, entrusted Sturt with the presentation of the flag which was to be planted there. In September 1844 he essayed the task, taking an assistant-surveyor, a surgeon, and John McDouall Smart as draughtsman. Twelve men accompanied them, and they took drays, and, including live-stock, food for eighteen months. The English Government desired them to proceed from Mount Arden at the head of Spencer's Gulf, straight to the interior if they could do so without risk. Aware of the nature of the arid tract thus suggested to him, Sturt preferred to ascend the Darling river and diverge thence. At the Barrier Ranges and the Grey Range the search for water severely taxed energies exhausted by a heat of 100° to 117° in the shade. He attained, in an excursion with one lad, a latitude of 28·9 S., and was then within thirty miles of Cooper's Creek, then unknown. He returned baffled to his camp, where, to mitigate suffering from heat, he excavated a place to shelter the men. With the departure of summer no moisture came. The wool of the sheep ceased to grow. The

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"For, oh! bethink—in other times
(And be those happier times at hand),
When science, like the smile of God,
Comes brightening o'er that weary land!—
How will her pilgrims hail the power
Beneath the drooping myall's gloom
To sit at eve, and mourn an hour,
And pluck a leaf on Leichhardt's tomb."

hair of the men suffered in like manner. Their very nails were parched and brittle as glass. Scurvy was amongst the men. Mr. Poole, the Assistant-Surveyor, died just after rain had come in July to cheer his companions. They buried him in the desolate waste from which they had so long laboured to escape.

The details of their struggles to do the duty they had undertaken cannot be here recounted. The main facts must indicate them. Forming a depôt near the intersection of the 139th degree of east longitude, and the 29th degree of south latitude, Sturt pushed on to the north-west, and having had a short gleam of hope when he discovered Eyre Creek, was driven back from his furthest point in lat. 24·30, long. 137·58. The coveted centre of the continent was still a hundred and fifty miles away. Again he steeled himself to the attempt. Strzelecki's Creek and Cooper's Creek were visited (the latter being named by Sturt after the Chief Justice at Adelaide), but as the course of the latter was from east to west, Sturt crossed to the north, and was appalled at the Stony Desert which he encountered and named. He might well think that the country he saw had "no parallel on the surface of the earth." No blade of grass relieved the sandy waste of ridge and hollow. From a higher sand-hill than those adjacent he looked upon that which still appears in maps of Australia as the Great Stony Desert. It seemed livid with wrathful heat. He sat down and gazed with a stupefaction almost as stony as the landscape. Where no hills break the horizon the contemplation of limitless wastes baffles hope as the search for the bounds of infinity baffles the mind. He had chanced to meet one of the most barren spots in a barren land. He had no reason to doubt that the rest of the central hollow of Australia was like it; and yet in a few years Burke and Wills found a practicable track not far from the scene of Sturt's disaster. He reached Cooper's Creek and ascended it for many miles. Water-fowl abounded on its numerous pools, but a prosecution of the journey was made impossible by illness of Sturt and one of the men, and by the weakness of the horses. Another summer was approaching. In crossing from Strzelecki's Creek to the depot at Fort Grey hot winds inflamed the scorching atmosphere, so that a match dropped on the sand ignited. When they reached the depot (where Dr. Browne had

been left in charge while Sturt advanced to Cooper's Creek) they found a letter stating that the water had become putrid and the depot party had retreated. "A sickening feeling" overcame Sturt. "Not," he said, "on my own account; for with the bitter feelings of disappointment with which I was returning home, I could have calmly laid my head upon the desert never to raise it again." But duty was to be done, and though smitten with scurvy, he did it. One hundred and eighteen miles without a drop of water separated them from Flood's Creek, and there it was rapidly evaporating. Sturt immediately shot three bullocks, filled their hides with water, sent these strange vessels half-way to Flood's Creek, abandoned all baggage that could be left behind, and thus freed from impedimenta, transported his party safely to Flood's Creek. Supplies failed them before the Darling was reached, and then Sturt was so weak that he was lifted in and out of the roughly-jolting dray. He survived, but soon afterwards lost his eyesight irrecoverably. His return did not long precede that of Leichhardt from Port Essington. One traveller had unveiled rich, well-watered tracts, the other had found desolation. Each had suffered, the unsuccessful most.

The information derived from Sturt's expedition made it almost a settled belief in the colonies that a vast stony desert occupied the interior; and Leichhardt, on his second and third journeys, contemplated the probability of being repulsed by it to the watershed of the north coast which he had visited in 1845.

In feeble Western Australia exploration was not neglected. Lieutenant Roe, R.N., the Surveyor-General, in 1835 and 1836, made repeated invasions of the vast granite tract which, hemming in the tertiary belt on the west coast, extended eastward for hundreds of miles until it met the still vaster tertiary wastes of the interior. Shallow salt lakes, separated from each other by patches of scrub, impeded without refreshing the traveller; and only on the shoulders and base of some higher granite hill could provender and water be found for horses.

In 1846 three young surveyors, the brothers Gregory, started with a scanty equipment of four horses and seven weeks' provisions. They travelled nearly one thousand miles in forty-

seven days through a barren territory. Near lat. 28, long. 117, they were compelled to retrace their steps to the coast, and on the Arrowsmith river they discovered a fine seam of coal, with which they made unwonted camp fires. The Government immediately sent an expedition to verify the site of the coal and test it. The coal was good, but the surrounding country was uninviting, and could maintain no population. Good pasture lands were the Fortunatus' purse which the young colony earnestly sought for.

Sir Thomas Mitchell's expedition in 1846 to the upper waters of the Darling has been briefly referred to. When he undertook it Leichhardt had not returned from Port Essington, and Sturt was struggling in the desert. Mitchell was eager to distinguish himself. He took provisions for a year, horses, cattle, sheep, and drays; and with Mr. Kennedy and a surgeon, Mr. Stevenson, his whole party numbered twenty-nine. From the Macquarie river he made his way to the Narran, the Balonne, and the Culgoa. While making experimental excursions there, despatches from Sydney told him of Leichhardt's return from Port Essington. Changing his previous intentions, Mitchell ascended the Balonne, passed the junction of the Maranoa, and reaching the Cogoon followed it to its sources, where Mount Abundance, the Fitz Roy Downs, and the Grafton Range received names from their discoverer. He turned westward and examined the sources of the Maranoa and the Warrego. Perceiving that these waters flowed to the Darling, and desiring to discover a direct route to the Gulf of Carpentaria, Mitchell turned to the north where the intricate convolutions of the dividing range separated the Darling waters from those of the east coast, and also from the sources of Cooper's Creek or the Barcoo, which Mitchell was now about to discover and name the Victoria river. A patch of volcanic country was here intruded, and gave such beauty and freshness to the scene that Mitchell in ecstasy named the everlasting hills after the great palæontologist Professor Owen and others, and as he descended a stream which the natives called Nogoa, called the valley Salvator Rosa.[1] Soon the stream turned eastward, and Mitchell knew that he was trending towards Leichhardt's track, which was not more than two days' ride from him. He tried

[1] Mount Owen was found to be 2873 feet above the sea-level.

again, and finding the waters of the Belyando river, was again disappointed, for they also inclined palpably to the east coast, and would conduct him either to the Suttor or the Burdekin. He turned back to the dividing crest at Mount Pluto. A tributary of the Warrego again raised his hopes, but dashed them when he found that it ran to the south. Close to him were the sources of the Barcoo, or Cooper's Creek, and when he saw the landscape through which they ran to the north-west, the coveted goal, he burst into a song of triumph.

"Ulloa's delight at the sight of the Pacific could not have surpassed mine on the occasion. From that rock the scene was so extensive as to leave us no room for doubt as to the course of the river which, then and there revealed to me alone, seemed like a reward direct from heaven for perseverance, and as a compensation for the many sacrifices I had made in order to solve the question of the rivers of tropical Australia."

He called the river Victoria. He followed its course to lat. S. 24·14, long. 144·34, and as his supplies were failing turned homewards, neither he nor his party doubting that the north-west course of the river must conduct it to the Gulf of Carpentaria. Yet in a straight line he was as near the sandy deserts of South Australia as to the northern coast; and had he followed the river for a short distance from his turning-point, it would have been found to wheel sharply round and pursue a south-westerly course towards Sturt's Desert, then unknown to Mitchell. On returning, the boats (for Mitchell was ever careful to provide against all evil contingencies) were found useful in crossing the Darling, then first seen in flood-time.

Sir Thomas Mitchell's confidence that the outlet of the new-found river was in the Gulf of Carpentaria was hardly entertained by the public. Sturt's experience of the desert had become known, and there were surmises that the new river might, like streams in Persia, be lost in the waste of sand. Nay, was not the Darling itself a succession of salt-pools when found by Sturt and Hume? The area drained by the Darling was proved to be enormous, and yet it had failed to maintain a fresh-water stream.

Mr. Kennedy was despatched to prosecute the search. Alas! almost immediately below Mitchell's turning-point he found the

river curve round to the south-west. He traced it (naming a stream which joined it on its right bank the Thomson, after Mr. E. Deas Thomson, the Colonial Secretary) as far as lat. 26·13, long. 142·20. Kennedy felt that he was amid the desolation spoken of by Sturt. Red sand-hills, a void waste of space; no grass, no trees. The spent force of the river lingered in pools of water, ignorant of motion. At last even pools could not be found. The horses were starving, and Kennedy turned back from sheer necessity when less than a hundred miles from the easternmost point attained by Sturt on the river thus ascertained to be the Barcoo of the natives and the Cooper's Creek of Sturt.

Mitchell's castles in the air were rudely overthrown. His trustworthy works were under-rated. Yet much useful information had been obtained. The nature of the cordillera to the north had been described by Leichhardt. Mitchell had shown the pastoral value of the Maranoa and other tributaries of the Darling, and of the heads of the Barcoo.

There was one portion of the east coast which still provoked curiosity, and Kennedy was sent to examine it in 1848. A new settlement on the Cape York Peninsula might promote intercourse with the East Indies. Kennedy had with him Mr. Carron, a botanist, and eleven others, one of them a native called by the whites Jacky Jacky. He was to land at Rockingham Bay, and explore the interior, emerging at Port Albany, where a ship was to meet him, and thence he was to proceed to examine the rivers flowing into the Gulf of Carpentaria, connecting his discoveries with those of Mitchell in 1846. It is to be noticed that Mitchell and Kennedy found the natives inoffensive on the Barcoo, but that Leichhardt was attacked when he reached the neighbourhood of the coast, where previous provocations had bred ill-will. This last fact was not duly estimated by Kennedy, nor was he aware that a ruffian named Grayburne, sailing by the York Islands in 1841, coolly shot "a black-fellow" for practice and recorded the fact in the book kept at Booby Island for nautical uses.[1] The

[1] Crawford Pasco, one of the officers of H.M.S. 'Beagle' (discovery ship), seeing the record in June 1841 remarked: "I pity the first white man that comes within reach of that tribe." He attributed Kennedy's death to revenge for Grayburne's act. But other acts of like nature might have followed.

mangrove swamps and the *calamus Australis* were to make themselves terribly notable.

At the end of May 1848 Kennedy landed. He no sooner entered amongst the thickets than the calamus demanded all energies to cope with it. Sending out scores of shoots from its root, climbing high amongst its jungle mates, with spine-covered leaves, and long tendrils armed with crooked spines, it made a woven mat of the vegetation over which it crawled. It had to be hewn away with axes, and the spines of the tendrils fastened almost inextricably upon the hewers. For weeks the swamps and the calamus prevented progress. At first the natives were peaceable. They learned the names of the travellers, and Kennedy made presents to them, but he thought them prone to steal. Ague visited the camp. The natives appeared to become hostile. A spear was thrown. Fire-arms brought four of the assailants to the ground. This was on the 1st July, 1848. Struggling onwards Kennedy had to abandon his damaged carts. The horses were weary under the weight of their pack-saddles. After a laborious detour they came upon the east coast at Princess Charlotte Bay, but not without another fatal encounter with the natives. They had thought it possible that a ship might await them at the Bay, H.M.S. 'Rambler' having been instructed to look for them there in August. It was now October. Kennedy turned back to the rocky ridges and gullies. The men were failing in strength. All could not go on. Kennedy formed a depot near Weymouth bay, and rested two days before pushing on with Jacky Jacky and three white men on the 13th November. If he could reach Port Albany the relief ship there would be sent to Weymouth Bay for the nine men left behind. Food failed. Only Jacky Jacky survived to tell the tale of Kennedy's sufferings.

The 'Ariel' was waiting for him at Port Albany on the 23rd December. Early in the morning the crew spied a black man with European clothing, shouting and making signs. When the boat reached him exhaustion and joy stopped his speech. He was at death's door from weakness and toil. He could whisper hoarsely who he was, and that Kennedy was dead. They took him up tenderly and laid him in the boat. His recovery seemed at first doubtful, in spite of the care with which he was treated. When he was strong enough to make a statement

it was taken down in writing. He described the struggles of the journey,—how one man, Costigan, wounded himself by accident with his own fire-arms as he placed his saddle under the tarpaulin; how at Pudding Pan Hill, near Shelburne Bay, Kennedy left the other white men to take care of the wounded man, while he pushed on with Jacky Jacky, hoping to procure medical aid at Port Albany; how the native's horse fell on him, and Kennedy had to move the horse to relieve Jacky Jacky, and the horse never got up.

"The next day we went a good way. Mr. Kennedy told me to go up a tree and see a sandy hill somewhere. I went up a tree and saw a sandy hill a little way down from Port Albany. The next morning we went on, and Mr. Kennedy told me we should get round to Port Albany in a day. We travelled on all day till noon, and then we saw Port Albany. Then he said, 'There is Port Albany, Jacky; a ship is there. You see that island there.' This was at the mouth of Escape river. We stopped there a little time. All the meat was gone. I tried to get some fish, but could not. . . . We met a lot of blacks and we camped. The blacks all cried, 'Powad! Powad!' and rubbed their bellies, and we thought they were friendly, and Mr. Kennedy gave them fish-hooks all round. Every one asked me if I had anything to give away and I said 'No'; and Mr. Kennedy said, 'Give them your knife, Jacky.' This fellow on board was the man I gave the knife to. I am sure of it. I know him well. The black that was shot in the canoe was the most active in urging the others to spear Mr. Kennedy. . . . We went on this day, and I looked behind, and they were getting up all their spears, and ran all round the camp which we had left. I told Mr. Kennedy that very likely they would follow us, and he said, 'No, Jacky, these blacks are very friendly.' I said, 'I know those black fellows well; they speak too much.' . . . We went on two or three miles and camped. I and Mr. Kennedy watched them that night, taking it in turns every hour all night. By-and-by I saw the black fellows. It was a moonlight night, and I walked up to Mr. Kennedy and said, 'There are plenty of black fellows now.' This was in the middle of the night. Mr. Kennedy told me to get my gun ready. The blacks did not know where we slept, as we did not make a fire. We both sat up all night. After this daylight came, and I fetched the horses and saddled them. Then we went a good way up the river, and then sat down a little, and then we saw three blacks coming along our track, and then they saw us, and one ran back as hard as he could run and fetched up plenty more, almost like a flock of sheep. . . .

They followed us all day. All along it was raining, and I now told him to leave the horses and come on without them; that the horses made too much track. Mr. Kennedy was too weak and would not leave the horses. We went on this day till towards the evening; raining hard, and the blacks followed us all day, some behind, some before; in fact black fellows all around following us. Now we went into a little bit of scrub, and I told Mr. Kennedy to look behind always. (Kennedy was near-sighted.) Sometimes he would do so, and sometimes not. Then a good many black fellows came behind in the scrub and threw plenty of spears, and hit Mr. Kennedy in the back first. Mr. Kennedy said to me, 'O Jacky, Jacky! shoot 'em, shoot 'em!' Then I pulled out my gun and fired, and hit one fellow all over the face with buckshot. He tumbled down, and got up again and again, and wheeled right round, and two black fellows picked him up and carried him away. They went a little way and came back again, throwing spears all round more than they did before. I pulled out the spear at once from Mr. Kennedy's back, and cut out the jag with Mr. Kennedy's knife. Then Mr. Kennedy got his gun and snapped, but the gun would not go off. The blacks sneaked all along by the trees and speared Mr. Kennedy again in the leg above the knee a little, and I got speared over the eye, and the blacks were now throwing their spears all ways, never ceasing, and shortly again speared Mr. Kennedy in the right side. At the same time we got speared the horses got speared too, and jumped and kicked all about and got into the swamp. I now told Mr. Kennedy to sit down while I looked after the saddle-bags; and when I came back again I saw blacks along with Mr. Kennedy. Then I asked him if he saw blacks with him. He was stupid with the spear-wounds and said no. I then asked him where was his watch. I saw the blacks taking away his watch and hat as I was returning to Mr. Kennedy. Then I carried Mr. Kennedy into the scrub. He said, 'Don't carry me a good way.' Then Mr. Kennedy looked this way, very bad (Jacky rolling his eyes). I said to him, 'Don't look far away,' as I thought he would be frightened. I asked him after, 'Are you well now?' and he said, 'No. I don't care for the spear-wound in my leg, Jacky, but for the other two spear-wounds in my side and back,' and said, 'I am bad inside, Jacky.' I asked him, 'Mr. Kennedy, are you going to leave me?' and he said, 'Yes, my boy, I am going to leave you. I am very bad, Jacky. You take the books, Jacky, to the captain, but not the big ones; the Governor will give anything for them.' I then tied up the papers. He then said, 'Jacky, give me the paper and I will write.' I gave him pencil and paper and he tried to write, and then fell back and

died. I caught him as he fell back, and held him. I then turned round and cried. I was crying a good while until I got well. That was about an hour, and then I buried him. I dug the ground with a tomahawk and covered him over with grass, thin logs, and my shirt and trousers. That night I left him near dark. I would go through the scrub, and the blacks threw spears at me, a good many, and I went back again into the scrub.

"Then I went down the creek which runs into Escape river, and I walked along the water in the creek very easy, with my head only above, to avoid the blacks and get out of their way. In this way I went half a mile. Then I got out of the creek and got clear of them, and walked on all night nearly and slept in the bush without a fire. I went on next morning and felt very bad, and I rested here for two days. I lived upon nothing but salt-water. Next morning I went on, and camped one mile away from where I slept, and ate one of the pandanus fruits. Next morning I went on and sat down; then I wanted to rest a little, and then go on; but when I tried to get up again I could not, but fell down again very tired and cramped, and I stopped two days. Then I went on again one mile, and got nothing to eat but one nonda, and I went on again that day and camped, and on again next morning about half a mile, and sat down where there was a little water, and remained all day. On the following morning I went a good way, round a great swamp and mangroves, and got a good way by sundown. The next morning I saw a very large track of black fellows. I went clear of the track. . . . I now got into the ridges by sundown, and went up a tree and saw Albany Island. Then next morning at four o'clock I went on as hard as I could all the way down over fine clear ground, fine iron-bark timber, and plenty of good grass. . . . I went on the top of the hill and saw Cape York. I knew it was Cape York because the sand did not go on further. I sat down then a good while. I said to myself, 'Then this is Port Albany.' I believe indeed somewhere Mr. Kennedy also told me that the ship was inside close up to the mainland. I went on a little way and saw the ship and boat. I met close up here two black gins and a good many piccaninnies. One said, 'Powad! Powad!' Then I asked her for eggs, and she gave me turtle's eggs and I gave her a burning-glass. She pointed to the ship, which I had seen before. I was very frightened of seeing the black men all along here, and I was on the rock cooeeing, and very very glad when the boat came for me."

Such was the graphic account told in a (to him) foreign language by the untaught child of the people, whom those who know

nothing of them are prone to class as brutes. His reference to his countrymen as "black fellows" implied no contempt, for it had been the ordinary conventional term before he was born. On one point he was discreetly reticent. He said nothing of the blacks he killed or wounded when he was supporting his dying master. That he made himself a terror to them is clear from the narrative. Before he had been able to make a full statement the 'Ariel' had steered along the coast to search for the three men left at Pudding Pan Hill. A canoe with natives was seen. Jacky was carried on deck and recognized coming on board the man to whom he had given his knife. The man was seized; his companions jumped overboard, and were paddling away when the discovery of some of Kennedy's property on the prisoner instigated pursuit. One man was shot in the canoe; the rest jumped into the sea and escaped by swimming. More of Kennedy's effects were in the canoe, and Jacky's tale was confirmed in the minds of the captain and crew of the 'Ariel.' They could not find the three men left near Shelburne Bay; and, as the schooner had only two men on board while the search was made, Captain Dobson thought it best to hasten to Weymouth Bay to save the nine left there. A relief party landed under Jacky's guidance. They met natives who shouted "White men!" and pointed to a hill. One of the natives undertook to carry a memorandum written to announce the arrival of the 'Ariel.' It may seem strange, but it is true that he carried it safely to the men whom the blacks had been beleaguering for weeks. The relief party pushed on till Jacky recognized the country, and at last found the camp. Two only of the nine were left alive. Exhausted as they were when Kennedy left them in November, two had soon died. On the 21st November about sixty natives came armed, and invited them to a supply of fish. They dreaded such bearers of gifts. Then the natives peformed by turns antics of hostile and peaceful tendencies. Too weak to hold their guns to their shoulders, the men rested them on their knees. At last spears were thrown, fire-arms discharged, and the natives were beaten off. After this attacks were frequent, but the fire-arms kept them safe from the natives, though not from death. The survivors became too weak to bury the dead, and two or three corpses kept

ghastly company with Carron and Goddard. Shortly before the rescue, as Goddard shouldered his gun Carron fell down in attempting to do likewise; but had presence of mind to point it as he sat. The natives surprised them sometimes by coming forward after a battle and giving them fish; and it would seem that they could have killed them if they had set their hearts upon doing so. Goddard was away from the camp looking for food, when the strange besiegers appeared with the memorandum sent by the captain of the 'Ariel.' Carron gave them presents and a note in reply. They watched him as he wrote. But instead of going off with the letter they seemed to prepare for one of their attacks. In that moment of torment the victorious Jacky appeared with the 'Ariel' relief party. When the 'Ariel' reached Sydney the Government sent Jacky Jacky back in another vessel to search further for the missing men. At Weymouth Bay six bodies were found and decently buried. At Shelburne Bay the three men were not found alive or dead, though the coast was diligently examined. Jacky discovered all the secreted but much damaged papers; and even various articles he had thrown aside in the scrub were found where he predicted they were. The whole of his narrative was corroborated. Kennedy's grave had been disturbed. His body was not found. Jacky shed tears at the spot, but was eager to revenge his master's death upon his slayers. Those who accompanied him were loud in his praise. At this time tribes had been exterminated so largely that there were thousands of colonists who knew no more about the aborigines than if they had never left the Northern hemisphere. To them it was a surprise that a black native could be affectionate, brave, truthful, pitiful, provident, clever, and enduring. Their wonder knew no bounds when the story of his sufferings told by himself made an impression which they thought only an eloquent Caucasian could have produced.

The exploration of the North Coast was not revived, and in 1849 the settlement at Port Essington was abandoned. The garrison had been subjected to great privations, and no advantage was derived from maintaining a settlement there. Except in rare instances continuous residence in tropical climes is inimical to the health of the English; and neither gain nor pleasure resulted to the nation or to the residents from tenanting

a tertiary projection in the Arafura Sea, where to vie with Malays in gathering trepang seemed the only method by which the cost of the establishment could be diminished to the extent of a few pounds. There was a brief occupation of Port Curtis, where the township of Gladstone was formed in 1847. Colonel Barney, R.E. was appointed Superintendent of North Australia, and reached Port Curtis early in 1847. Before he had fairly established his company of nearly 100 persons, orders from England broke up the settlement. Designed by Lord Stanley, founded under direct instructions from Mr. Gladstone, the establishment was countermanded by Earl Grey on the 15th November, 1846. Colonel Barney, R.E., had, in his brief capacity as Superintendent of North Australia, landed at Port Curtis with 88 persons in January 1847. In April he received orders to break up his camp and return to Sydney. Earl Grey expressed his regret that Fitzroy had "incurred so heavy an expense in preparing for the reception of the expected exiles," and Fitzroy explained that if he had not incurred it he would have assumed "the responsibility of detaining the exiles in Sydney," which "appeared extremely undesirable." Graziers began even in those days to "proceed with their flocks and herds to occupy the country at the back of Port Curtis, and Fitzroy applied for authority to exercise due control over the territory.[1]

The career of the native race of New Zealand must be traced in the history of the colony. It is woven indissolubly with the fortunes of the white intruders. In Australia and Tasmania it is otherwise. Murders were many, but they were committed out of sight, and beyond the knowledge of the administrators of the law. The wretched criminal class of whom the servants of settlers in the interior were composed, being beyond control, continually abused the power which fire-arms gave them. Even when atrocities were heard of, it was difficult, sometimes impossible, to obtain legal proof of them. Hearsay evidence was not enough to justify the taking away the life of a white man; but on hearsay evidence, or none at all, the black man was continually hunted and shot.

A young man was exploring in New England accompanied by a gentleman fresh from England, and by a stock-keeper of the

[1] Parliamentary Papers, 1848, vol. xliii.

criminal class. In following their kangaroo-dogs they came up with an old man and two or three women and children. While the young man was endeavouring to communicate by signs, the stock-keeper deliberately raised his gun to destroy the blacks, and was only prevented from doing so by seeing the young man's gun pointed at himself, and being assured that if he pulled the trigger, he would himself be shot. Then he desisted with oaths; but probably executed his purpose a few weeks afterwards when travelling without control through the same district. Such things were well known to occur; but criminals would not testify against themselves. An author who makes a statement in general terms may be challenged to produce proof. Proofs are extant in English Parliamentary papers. Of official encounters the following may be quoted as a specimen:

Before Gipps reached the colony, Major Nunn, Commandant of Mounted Police, had been sent by the Acting Governor, Colonel Snodgrass, to the Liverpool Plains district to protect the squatters from the provoked natives. He took twenty-three of his corps. Stockmen from neighbouring stations joined him. He captured a party of blacks on the Nammoy in January 1838. Through a native (boy) interpreter he demanded the surrender of the reputed murderers of a servant of a person named Hall. Two were pointed out and secured. The remainder of the tribe, excepting one retained as a guide, were dismissed. At night the prisoners slipped off their handcuffs, and one escaped. The other was shot by the soldier-policeman on guard. Major Nunn advanced in pursuit of blacks who had killed two servants of a Mr. Cobb. A tribe was overtaken. Corporal Hannan called out that he was speared in the leg, "at the same moment" (Nunn deposed), that he heard several shots fired in rapid succession. Sergeant Lee, one of the most efficient of the corps, shot the spearer; a charge ensued, and natives were shot. Pursuit was made; after lapse of more than an hour, the blacks were overtaken, and Lee deposed that, from what he saw, from forty to fifty blacks were killed. Hannan deposed that he had been in the act of capturing the black, who turned suddenly on him and speared him. Lieutenant Cobban deposed that he had attempted to "ride down" one of the blacks before Hannan was speared. The bodies of the slain were left to rot. Such was

the official report. But men that were in the expedition said that when Sergeant Lee told Nunn that a black was in a tree or in a waterpool, Nunn said, "Tell him to come out in the Queen's name." No answer, Major. "Shoot him."

Gipps ordered an inquiry, but circumstances delayed it. The mounted police were scattered through the country on various services. A massacre of the blacks at the Myall Creek engrossed attention. It was not till May 1839 that depositions were taken at Merton about Nunn's campaign. In June the Attorney-General reported on the papers. It was to be regretted that Major Nunn and Lieutenant Cobban, both magistrates, had held no inquiry on the spot, as the Attorney-General invariably urged magistrates to do, in case of death of white or black men. The documents before him were such as he could not act upon. They were but copies. Others of the party ought to be examined if his Excellency should think that in 1839 the inquiry ought to be held, which in his (Mr. Plunkett's) opinion "ought to have taken place in January 1838." Sir George Gipps stayed his hand. Conviction would have been perhaps impossible. How could mounted troopers be charged with murder when obeying their officers? How could Major Nunn be prosecuted for using the discretion committed to him verbally by the Acting Governor?

The seven white men hanged for the Myall Creek massacre were perhaps looked upon as the only propitiation or warning possible. Amongst them it was possible that some guilty with Major Nunn received tardy punishment, for some of them had aided him.

The new Border Police Act had been passed, and the Government hoped to reduce to order the disorders beyond the boundaries. Gipps published an earnest appeal to the colonists. "As human beings partaking of our common nature, as the aboriginal possessors of the soil from which the wealth of the country has been principally derived, and as subjects of the Queen, whose authority extends over every part of New Holland,—the natives of the colony have an equal right with the people of European origin to the protection and assistance of the law of England." Inquests would invariably be held. . . . "His Excellency is determined to make no distinction, whether the aggressors or parties injured be of one or the other race or colour, but to bring

all, as far as may be in his power, to equal and indiscriminate justice. . . . Each succeeding despatch from the Secretary of State marks in an increasing degree the importance which Her Majesty's Government, and no less the Parliament and people of Great Britain, attach to the just and humane treatment of the aborigines." He declared "most earnestly and solemnly his deep conviction that there is no subject or matter whatsoever in which the interest as well as the honour of the colonists are more essentially concerned." At the same time (May 1839) he republished the following significant notice issued by Governor Bourke in 1837, which marks the cause of many an act set down as "wanton outrage by the blacks," and in the enforcement of which it was known that Gipps would not quail like Bourke.

"The Governor having been informed by the reports of certain of the Commissioners of Crown lands, that at the stations beyond the limits of location, overseers and other persons in charge of cattle and sheep in those remote districts, are not unfrequently guilty of detaining by force, in their huts, and as their companions abroad, black women of the native tribes resorting to their neighbourhood, an offence not only in itself of a most heinous and revolting character, but in its consequences leading to bloodshed and murder; his Excellency has been pleased to direct the Commissioners to report the names of all persons whom they shall find in any manner concerned in so abominable and unchristian a proceeding, in order that their licenses may be immediately cancelled, and that they may be prosecuted under the Act, as illegal occupiers of Crown lands or otherwise, as the law directs."[1]

Mr. J. R. Hardy, an able police magistrate, educated at one of the English Universities, gave evidence in 1839. The blacks had speared cattle and killed two or three men in the outer parts of his district.

"The cause of this state of things may be found in a hostile feeling on the part of the blacks against the whites in the cases of the murders, and in the entire absence of any police force. It is impossible to trace the particulars of the events that produced these hostile feelings, but no one who is acquainted with the nature of this people will believe that they can be stirred up to murder a white man without strong

[1] For publishing this notification the 'Sydney Herald' upbraided the Governor for inflicting upon the colonists the "drawling philanthropy and mawkish sentimentality" of his "Whiggish patrons."

excitement. The black of this country is no tiger prowling for human blood; it is in the extremity of fear, or in doing the wild justice of revenge, that he attempts the life of a European. No long settled occupier of the interior will deny that the slaughter of the blacks has been a common feature in the occupation of the country—and to common fame, in this particular, tribes dwindled down to nothing, add a striking testimony. The very fact most strongly urged by the settlers, viz. the distance of their stations from the eye of power, has been the shield under which countless hundreds of blacks have been sacrificed."

If the occupation of Queensland in later times had not shown the same brutal slaughter, the atrocities of the early days might have been ascribed to the convicts. But the colonists of Queensland have amply vindicated their claim to a vile excellence. Sometimes an outrage by hostile blacks was avenged upon the peaceful. A terrible proof was before the Courts in Sydney in 1838. Mr. Hobbs, a superintendent of a cattle station at Myall Creek, an affluent to the Gwydir river (a tributary to the Darling) flowing from the cordillera at New England, left his home when about forty or fifty natives were camped near it. More than half of them were women and children. All were inoffensive and friendly. Hobbs returned after a few days, in June 1838, and missed the natives. At some distance from his hut he found remains of nearly thirty of them. Carrion birds and dogs were devouring what fire had not consumed. Inquiry elicited from a servant who acted as "hut-keeper," the fact that many armed men had come to the hut; had tied the blacks with ropes, had driven the wailing women and children to the place of massacre from the hut to which they fled for shelter; had shot some and cut down others. The stock-keeper at the station joined the murderers, although he had been on friendly terms with the blacks in Hobbs' presence. The whole party returned to the hut, and slept there. In the morning they took fire-sticks from the hut and made a fire to burn the bodies of the slain. The remains of twenty-eight were discovered amongst the fragments of bones. As to the ten or twelve more, —whom Hobbs had left at the station, and who had left their camp before the white men arrived in a body,—Sir George Gipps wrote that on the day after the massacre the armed whites scoured the country in search of them, and "they have

never been seen or heard of since." Mr. Hobbs not only inquired, but took down the narrative of his hut-keeper, and reported the facts to the Government. A police magistrate was despatched to the scene. Warrants were taken out against those whose names were ascertained. One of the most active of the murderers, not a convict but a native white, by desperate riding (with frequent change of horses at the huts of friends of his own class) reached Sydney (more than three hundred miles from Myall Creek), and by taking ship to Van Diemen's Land escaped arrest and arraignment. The rest were sent to Sydney. There were two trials. Charged with killing "Daddy," an old man, they were acquitted for want of identification of the remains of the victim. They were again arraigned for killing a black child of name unknown, whose remains were identified. The prisoners were ably defended by leading counsel provided by their several employers. A plea of "*autrefois acquit*" was put in, and the jury found that the felonies and murders involved in the second information were not those of which the prisoners had been acquitted. The second trial then proceeded, and they were found guilty of murdering an aboriginal black child, name unknown. Seven of them were hanged: the evidence as to the complicity of four others being thought sufficiently weak to call for exception in their cases. The sentence was a public shock. A rescue was talked of. To hang men for murdering blacks seemed too horrible to the whites. There was much commotion throughout the colony. On the one hand the masters who had paid counsel for the defence were charged as abettors of misdoing; on the other the prosecution was denounced as "judicial murder." The sins of every Governor since the days of Phillip had borne fruit. Sir George Gipps when he did that duty which they had neglected reaped the harvest of their crimes. Had previous Governors been equal to the occasion, at least the good faith of the Government could not have been sullied. It was now known to the cowardly abusers of superiority conferred by fire-arms, that with a certain amount of proof, there was a chance that they might be hanged for cold-blooded murders of unarmed fellow-creatures. A magistrate who visited the gaol to see the prisoners, one of whom was his hired servant, was struck out of the Commission of the Peace.

It was said that, to a settler, who at an interview with the Governor, declared that he would, in spite of the law, shoot blacks in self-defence, the curt answer was—"If you shoot them, sir, I'll hang you." The settler bowed politely and withdrew. The rumour is only worth repeating as an indication of public feeling at the time. The Myall Creek murderers were tried before Judge Burton, whom no bribe, threat, or weakness, could turn from duty. He declared that no motive for the commission of the murders

"appeared in evidence, except that it was alleged by some of the prisoners that depredations had been committed by the blacks upon cattle lower down the river, at the distance of from forty to sixty miles from where the unfortunate objects of their vengeance had resided for at least twelve or fourteen days, having also come to that station from Mr. Macintyre's, further up the river, and more remote from the place where the depredations were alleged to have been committed. At Macintyre's they had resided two months at least, so that there was not the slightest reason for supposing that the blacks who were put to death were concerned in any depredation complained of."

But by nearly half a century of contemptuous and condoned killing of fellow-creatures, public opinion had been so debauched that the right of an Australian to justice was denied in terms. All men knew that such massacres as the one brought to light by Hobbs were common. The exception in the case was that Hobbs had made it known. But what was known, and even boasted of, amongst confederates could not be proved upon hearsay evidence, however true. The leading newspaper was not ashamed to ask at one time how the Government could "presume to lecture the colonists on their duties towards the blacks;" and, at another, to say that unless the Government would do what was demanded "the settlers will set the Government at defiance by taking the law into their own hands, and executing summary justice. To this it will come at last." The editor affected to prophesy a condition already too well known. Summary injustice had long been done through nearly the whole territory, and in the colony it had been condoned by silence if not complicity. Successive Secretaries of State had pleaded the cause of humanity in vain. Governors had neglected warning. The ragged fringe of settlement composed chiefly of

convict servants had worked their evil will. Others had imitated them, and the masters, knowing that under the circumstances their servants' lives were sometimes in jeopardy, did not inquire as to the brutalities of which all men knew. The Judge was pitiful though just. In sentencing[1] the criminals, he said:

". . . This is not the case of the murder of one individual, but of many—men, women, and children, old men, and babes hanging at their mothers' breasts, to the number in all, according to the evidence, probably of thirty individuals, whose bodies, on one occasion, were murdered—poor, defenceless, human beings. A party of blacks were seated round their fires which they had just made up for the night. They were resting secure under the protection of one of you. They were totally unsuspecting, when they were suddenly surrounded by a band of armed men, of whom you, the prisoners at the bar, were half, and all of whom were equally guilty. The blacks fled to the hut of one of you for safety, but that proved the mesh of their destruction. I am not stating these facts for the purpose of aggravating the painful feelings which you must naturally feel after being convicted of this offence, but in order to portray to the bystanders the nature of your offence in an alarming light, in order that they may see what offence it is for which you are about to offer up your lives. I cannot expect that any words of mine will reach your hearts, but I hope that the grace of God may reach them, for nothing else can reach those hardened hearts which could surround that fatal pile, and slay the fathers, the mothers, and the infants. Extraordinary pains were taken by some one, either by yourselves or persons interested, in concealing this affair, to keep it from coming into light. You burned the bodies for the purpose of concealment, but it pleased God to send a witness to the spot before they were entirely consumed. Afterwards some one removed even the remains that were left. The place was swept and garnished, so that no vestige might remain, but the crime had been witnessed in heaven, and could not be concealed. The hundreds of birds of prey that were floating about were witnesses enough to the whole neighbourhood that a carcase was lying there. . . . But, notwithstanding all the efforts that were made, the rib and jaw-bone of a child, and some teeth, were found upon the spot. [There had been rain.] Your tracks from

[1] The sentence (quoted from a newspaper report) is printed in Judge Burton's 'Religion and Education in New South Wales.' No man strove harder to obtain religious instruction for the wretched creatures whose wants were so often exposed in trials before him.

Newton's to Dangar's, and from Dangar's to the fatal spot, were easily traced. . . . On the Saturday the party called at Newton's, asking for the blacks. . . . On Sunday evening, after spending the day in looking for them, you took them away from the station, thus closing that hallowed day by a scene of murder. . . . Whether few persons or many were concerned, whether one or twenty, whether black or white, the law will be equally upheld. You are objects of great commiseration, and while I do my duty as a Judge, I cannot conceal my feelings as a man; and therefore I say that I deeply feel for the situation in which you are placed, whatever may have been the motives by which you were stimulated,—and I trust that they were none others than those mentioned in the indictment—'that you had not the fear of God before your eyes, but were moved and seduced by the instigations of the devil.' If they were not your only motives—if you did act at the instigations of others, I trust that it may be brought to light. I cannot but look at you with commiseration. You were all transported to this colony, although some of you have since become free. You were removed from a Christian country, and placed in a dangerous and tempting situation. You were entirely removed from the benefit of the ordinances of religion. You were one hundred and fifty miles from the nearest police station on which you could rely for protection, or by which you could have been controlled. I cannot but deplore that you should have been placed in such a situation—that such circumstances should have existed—and, above all, that you should have committed such a crime. But this commiseration must not interfere with the stern duty which, as a Judge, the law enforces on me. . . ."

Never was the vulgar error that the voice of the people is the voice of God more perceptible. Never was the proverb that the heart of the people, and not their voice, is conscious of the Divine will, more notably confirmed. The just Judge, the stern Governor, were railed at in public and private. The dismissed magistrate, the condemned malefactors, were objects of loudly-expressed sympathy. Nevertheless, men knew that for the first time in the century justice had been honoured in the treatment accorded to the native race. The spectre of past atrocities was abashed.[1]

[1] I knew the Governor personally but not well. I knew the Judge intimately, and also the dismissed magistrate. He differed from others more in having the courage of his opinions than in his opinion itself. Also he felt bound to extend the best means of defence to a servant whose crime

Mr. Roger Therry, who acted with the Attorney-General for the Crown in the prosecution of the murderers, in published 'Reminiscences' (1863), informed the British public of the facts, and in the same chapter recorded the carelessness and bold bearing of an Australian when on trial for his life before Therry, who had become a Judge. The black was a giant: "the largest man I ever looked upon;" "so formidable was his ferocious strength that the sheriff was obliged to bring him from his cell in the gaol with his hands tied with ropes." He was fluent in the gibberish which Englishmen substitute for English when addressing puppies, babies, and foreigners. He beckoned to a settler in the Court, and whispered audibly, pointing to the Judge: "Lend me one sixpence, and I'll give it that fellow (Therry), and he'll let me off." This estimate of himself is recorded by the Judge as a distressing proof of the "marked inferiority" of the aboriginal mind.

Bound with ropes as he stood in the dock (for the intercession of his counsel could not persuade the authorities to set free the strength of this black Samson, although six constables were in attendance), the keen-eyed aboriginal was not so far wrong as the Judge imagined. Sixpence was not his price, nor was the judicial bench an arena which his conscience would permit him to corrupt: but to gain the favour of a former Governor he had done something to corrupt the social condition of the colony.[1]

The seven men who expiated the Myall Creek massacre confessed their crime, and, unwittingly, in doing so, arraigned their countrymen. "They were not aware," they told the gaoler,

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was committed in a remote district, whither the man was sent to guard the master's property. I knew that servant, who was one of the men executed.

[1] Robert Lowe, afterwards Chancellor of the Exchequer in England, thus wrote of Therry when the latter was leaving the colony. A picture of Sir Richard Bourke was to be sold with Therry's effects—

> "Here goes the portrait of Sir Richard Bourke,
> For whom I long did all the dirty work;
> His way of ruling was a perfect see-saw,
> The voice of Jacob and the hands of Esau:
> * * * * *
> But sainted Gipps! should limner e'er incline
> To trace on steel those lineaments divine,
> I'd never sell thy superhuman face:
> Never—till some one else had got your place."

"that in killing blacks they were violating the law, or that it could take notice of their doing so, as it had (according to their belief) been so frequently done in the colony before." Some of them might have added truly, that less than six months before their own dark deed, they were accomplices with Major Nunn. They rightly described the practice of their countrymen: and the conduct of Governor Hunter; the answer given by Governor Brisbane, when a fatal collision at Liverpool Plains was reported to him; and the shooting of an untried captive by an officer in the time of Governor Darling,—almost justified their opinion of the law as administered in the colony.

It is not to be supposed that all the colonists were accomplices in, or even knew of, the atrocities which were rife: nor were all the murderers themselves of like character. Some destroyed every native they met. Some with compunction (and in self-defence, as they persuaded themselves) kept guard on their property, and took life but rarely. At some stations in the interior there were but a few servants, convicts or freedmen, and they were without moral restraint or support from a master. In all districts the first capture of a black woman, or the first shot fired at a black man, led to retaliation by the blacks, when they found an opportunity, and thence to indiscriminate slaughter. In New England a party of men went out to avenge the death of two comrades killed at a hut in which they had kept by force a black woman for several days. They found, about thirty miles away, some apparently peaceful natives. Whoever they were, they were all killed, and their severed heads were placed upon posts of the stock-yard near which they were slaughtered.

The hands of the law needed to be many to reach to the limits of the extending circle of occupation. But they were few. Nevertheless, while the law remained in force, that life should in any case be demanded for life, the Governor was bound to enforce the law even when the miserable victims suffered as much for the accumulated crimes of others as for their own. The culprits were not all uneducated. A stealthier mode of murder than the red hand was put in practice. Arsenic was mixed with flour given to the natives, or was left as if by accident at a hut abandoned for a time.[1]

[1] When sheep were nightly folded, and were shepherded in the day, it

A medical man, a pastoral tenant, gained bad eminence for perpetrating a wholesale murder of this kind near the Eumeralla river at the north of Port Fairy. Mr. Latrobe recoiled with horror from the rumours. Sir George Gipps not only withdrew the culprit's pastoral license, but demanded that neighbouring squatters should purge themselves of any complicity with such deeds. There were several interviews with the mild but conscientious Mr. Latrobe before the minds of the squatters were set at rest. The man whose license was forfeited was not repelled as he ought to have been by his former friends, but after a time carried away the burden of his sin to another colony.

An indiscriminate raid upon men, women, and children, on the Emu Creek, near Mount Noorat, early attracted attention. The resident manager at the station was the reputed ringleader. His employers were not there. He endeavoured to hide the traces of his deed. It was so sweeping that hardly one survivor of the blacks attacked was left. Had there been many no Court would have received their evidence. One of the protectors of the aborigines was expected, and the criminal feared that all his pains had not sufficed to conceal the remains of his victims. There was danger lest an accomplice should tell truth. He saw some travellers arriving at his hut, feared that they were officers of justice, and fled, taking ship to the East Indies. After some years he returned unchallenged and became comparatively wealthy, but suffered a long disease which, unlike the violent deaths he had inflicted, gave him slow years of decrepitude, during which his conscience had ample space for reflection, and, it may be charitably hoped, for the remorse which leads to repentance. Soon after his flight his employers sold their right to the run. His temporary exile was an exceptional inconvenience to a slayer of a fellow-creature. When a white man was killed in retaliation, when the natives stole sheep, the fact was trumpeted forth, and avengers went on the trail. "A tame

frequently happened that in order to improve the pasture by rest, an outstation was left unoccupied for a time. The natives in search of scraps would of course look upon a few pounds of flour as a valuable prize. In this manner, at a date subsequent to the period under review, many natives were poisoned in Queensland.

black," *i. e.* one domesticated with the whites, was procured to follow his countrymen. The hostilities between tribes, and the glory of killing an enemy, ensured his ready assent. Humanity could but shudder at the facts when they were known by hearsay. The accident of procuring evidence as in the case of the murders at Myall Creek was rare. Hobbs, the superintendent, was looked upon with an evil eye for setting the law in motion. The man who rode for his life when the warrants were issued on that occasion, returned in a few years and was unquestioned.

Some authentic information, although entirely *ex parte*, has been preserved with regard to the early occupation of Port Phillip. When Mr. Latrobe was about to leave Victoria he wrote to many of the early settlers, and they narrated to him their experience.[1] Some were able to declare that they had never taken the lives of the aborigines. Much depended upon the character of the white intruder. Mr. Thomas Learmonth, who visited Buninyong in 1837 and occupied it in 1838—a man of Christian charity, and well known in after years for his good deeds amongst his fellow-colonists,—said that he was never in personal collision with the blacks. "I am free to confess that, considering the wrong that has been done in depriving them of their country, they have shown less ferocity, and have exhibited the desire to retaliate less than might have been expected."

Mr. Hutton wrote that—

"The blacks were rather fine men, but very mischievous, and did much damage not only to myself but to the settlers, as far as Mr. Ebden's run at Mount Macedon. No doubt there was blame on both sides, and had the whites not been over-familiar with them for the sole purpose of getting their women, many of the outrages they perpetrated might have been avoided. . . . As your Excellency is about to leave the colony, and I may not have another opportunity, it is a satisfaction to myself to solemnly assure you that I never shot or otherwise destroyed one of them. I never even fired at one."

Mr. Rose, of the Grampians, wrote: "In 1841 a hut-keeper and stock-keeper took two lubras (black women) from their camp to their own huts, and then went and shot the husbands,

[1] The MSS. sent to him are preserved in the Melbourne Public Library.

whom they buried in the sand. I was told this by a black, well known at the Grampians, who pointed out the spot where they were buried; and digging, I found it too true." One of the tribe, Old Billy, was transported to Norfolk Island for sheep-stealing, and "always cried when the Grampians were spoken of."

Mr. Hall said a shepherd showed him the skull of a boy, and added: "He was shot in the water as he was a-trying to hide himself after a scrimmage. There was a lot more the other side."

Mr. W. J. T. Clarke, after occupying land at Station Peak in 1837, moved westward to avoid contention with white neighbours. From Dowling Forest he went further afield to the Pyrenees in 1841. For nearly two years his armed shepherds were in jeopardy, and then "found it necessary to defend themselves." . . "A number of the blacks I am sorry to say were shot." His overseer was "many times engaged in these fights." With a keen sense of arithmetic he added, "Soon after, the natives became less numerous and peaceable." Near the Wannon river sensation was created by the wholesale slaughter of some thirty blacks. Mr. Latrobe would have extended the arm of the law to punish the slaughterers, but proof was not available. Mr. Blair, the police magistrate at Portland, wrote to him (1853) that the Whyte brothers were the only persons he "heard of being annoyed by the aborigines as early as 1840," but in 1841 and 1842 shepherds were "constantly murdered." Of acts of retaliation or offence by the whites Mr. Blair did not speak.

Mr. McMillan reported that he (overseer for Lachlan Macalister) formed a cattle-station on the Avon river in October 1840, and that in November, when quarrels of the usual kind ensued, the white men fled back to the Tambo river. In December McMillan, better armed, returned, and fire-arms laid low some natives in an action which was the precursor of many a hunting expedition in which men were the game. McMillan, less frank than another correspondent, did not inform Mr. Latrobe of the effect of the fire-arms.

In the north-east part of Port Phillip the testimony of an eye-witness and actor deserves to be quoted somewhat fully.

In 1838 a squatter, bold and strong, set forth with sheep and cattle to occupy land in Port Phillip. Other persons were then selecting runs at the Ovens river. He left his brother's sheep to travel to the Broken river while he diverged with cattle to Oxley's Plains, discovered by Hamilton Hume in 1824. The men with the sheep quarrelled with the natives at the Broken river. The cause was the usual one.[1] The convict men had trafficked with the women. The articles—tea, sugar, &c.—promised were not given. The natives attacked the white men at their encampment. Several were speared. Some, by activity and endurance, escaped in different directions. The track from Sydney was then studded with drovers of stock, and all drovers carried arms. The squatter arrived speedily, and with his brother took order for gathering together the sheep which had been scattered, and both brothers established themselves at the Ovens and King rivers.

For a time the slaughter of the men terrified the servants in the vicinity. Dr. Mackay had three convict servants, but when his hired servants ran away, the convicts said they would stay no longer, but would assist in driving the stock back to the Hume (or Murray) river. Mackay was compelled to retire thither. But the bold squatter was soon back at his post, and with another horseman formed a constant armed patrol. Others took heart of grace. Dr. Mackay, Mr. Bowman, Mr. Chisholm, Dr. Reid, and the Rev. Joseph Docker were soon established. The latter showed an example which the others were not wise or kind enough to follow. By prudence and charity he was enabled to avoid conflict and to live on friendly terms with the natives, who were ruthlessly shot at by his neighbours. The kindness of Mrs. Docker to a native severely wounded by another settler was supposed to have won their hearts in the first instance.

One settler wrote that he was the first to employ the blacks in a friendly manner, that his neighbours warned him of the impropriety of encouraging the natives, but that his policy

[1] As was common the cause was not dwelt upon in published narratives. But it was well known. I myself had afterwards in my service one of the men who escaped, and have conversed with others acquainted with the circumstances.

answered, and his example was followed. It is unnecessary to record his name, for he was not by any means the first to adopt a humane policy.

All the foregoing information related to the western and northern districts of the province. Mr. Fyans, a Commissioner of Crown lands at the westward, wrote that he had often inquired "as to the reported depredations of the natives. I felt convinced of their depredations, and generally found the origin of theft and murder was from an over-intimacy on both sides—the women ruling, depraved and bad; so much of this existed that . . . I am of opinion that two-thirds of the natives have died from this infection."

From this foul record it is a relief to turn to the report of Mr. Robert Jamieson, who occupied the country between Point Nepean and Cape Schank, and at Yallock on the head of Western Port. He went there in January 1839, and during "seven years saw a great deal of the natives, and invariably found them quiet, inoffensive, and willing in their way to be useful. They never did me any harm intentionally, and on many occasions really helped me."

Eastward of Western Port, however, there was no such peace. The strife commenced by McMillan in 1840 was continuous, and the lakes of Gipps Land enabled the hunted inhabitants to escape for a time the wholesale slaughter which overtook their countrymen on territory where horsemen could follow them freely. Even this security, however, became almost worthless when, on a rumour found eventually to have been false, the Government sent policemen with native trackers to rescue a white woman, supposed to have been wrecked and to be retained by the tribes. There was no such woman, but day by day and month by month terrified creatures fled from their pursuers, and sometimes the sobs and hard breathing of the runaways were heard by the police separated from them by some arm of a lake which had baffled the horsemen. This campaign occurred after the tribes had acquired some of the gibberish taught to them as English. There was pathetic grotesqueness in one attempt made to stay persecution. Told that they would be hunted until the white woman should be surrendered, and having none to surrender, they found a female figure-head of a wrecked vessel, and

produced it to pacify the Government. In one sense their offering was effective. It made the local government reflect seriously upon the nature of the work it had sanctioned. It was discontinued, but the number of lives destroyed was not recorded, and compensation, if thought possible, was not essayed. How on the affluents to the Murray from the snowy hills the tribes were pursued was in part described for Mr. Latrobe's information by one of the settlers, in 1853. With two stockmen he encountered a band of natives. In the onset, amid yells and flying spears, when the stockmen had fired in vain, the master shot two forward assailants.

"I had time to reload, and the war thus began continued from about 10 a.m. until 4 p.m. We were slow to fire, which prolonged the battle, and sixty rounds were fired, and I trust and believe that many of the bravest of the savage warriors bit the dust. It was remarkable that the children and many of the women likewise had so little fear that they boldly ran forward even under our horses' legs, picked up the spears and carried them back to the warrior men. . . My name was a terror to them ever after. I picked up a boy from under a log, took him home and tamed him, and he became very useful to me, and I think was a means of deterring his tribe from committing further wanton depredation upon my property. My neighbours, however, suffered much long after this."

The singular confession, shaped like a boast, proceeded to upbraid the government of Sir G. Gipps for threatening to hang settlers for shooting blacks, and to complain that the protectors "resorted to most contemptible means to gain information against individuals . . . . this instead of doing good did much evil—people formed themselves into bands of alliance and allegiance to each other, and then it was the destruction of the natives did take place." [The reader must picture to himself the destruction of human creatures whose only weapons were wooden, and who were thus pursued by men with fire-arms, from day to day and month to month.] "I, however, never troubled myself to go off my own run." Another sorrow overtook the bold borderer. By surviving the slaughtered natives he had entered into possession. Another class of claimants began to cluster around him, who were to be the precursors of those who would wrest much of the land from him. He complained that "no

sooner was all fear of the blacks dissipated than the whites became almost as great a nuisance in edging in their applications and claims for portions of our runs." Unfortunately the Government "gave too willing an ear to them," as they "were considered peaceful men; as well they might be when the war was ended. Ours was the danger, theirs the reward." The unhappy man had made a solitude, but had not obtained peace. Instructive as his narrative is, it does not reveal the worst offences against the natives. The massacres which led to so bloody a war (if war it could be called) preceded his deeds. He considered that he acted in defence of property and life, and he was bold enough to shrink from no danger and to conceal nothing. Though the Government and the humane settlers could not, under the existing law and circumstances, stay the progress of evil over territories almost as wide as Europe, the publication of the evidence of the Myall Creek massacre brought home to the minds of many the brutalities which had, without their complicity, been carried on for years. Before the trial took place owners of stock in the north-western districts prayed that the Government would organize a force to check the attacks of the natives and the retaliation of Europeans. Casting blame upon the natives they were yet constrained to say:

"Your Excellency cannot but be aware of the fearful consequences likely to result from men acting under exasperated feelings and subject to no control, but their hatred, heightened by their fear, leading even ourselves to habits that must make every lover of good government shudder. . . . We accordingly agree in your Excellency's desire to inquire into and suppress this violence, and we pledge ourselves not only to further so just a measure, but would most willingly furnish the means whereby their recurrence for the future might be guarded against by the establishment of an interior police, to be paid from a revenue to be derived from a rent on lands held under license."

They prepared a Bill and presented it to the Government. Gipps in 1839 brought the subject before his Council, and a Select Committee was appointed upon a Bill introduced by him. He had changed the form of the draft submitted to him. The Council made further amendments. As passed, the measure provided for the appointment of Commissioners of Crown lands —the creation of a Border Police, the compulsory rendering of

returns of stock, and an annual assessment (paid half yearly) of one penny for each sheep, threepence for each head of cattle, and sixpence for each horse depastured on Crown lands.[1] A Bill passed by Governor Gipps to enable the Courts of the colony to take evidence of the natives under affirmation or declaration, receiving it only so far as it might be corroborated circumstantially, was disallowed by Lord John Russell in 1840, though Gipps had provided that any giver of such evidence should be subject to penalties for perjury, although not allowed the full privileges of a witness. Probably the Act would have been little resorted to, for it was much easier for their enemies to shoot the natives than for the humane to procure interviews and ask them to give evidence. Nevertheless it is to be regretted that Lord John Russell presided at the time in Downing Street. After scrutinizing the ill deeds of the time it is a relief to turn to the recorded exceptions to the rule of barbarity; and it is just to state that there were some which found no place in official reports. Also a glimpse may be taken of the manner in which Lord Stanley enjoined upon the Queen's representatives their duty towards the dusky Australians who had been compelled to submit to her rule. The Commissioner of Crown lands at Armidale in New England reported

"a most praiseworthy example of the beneficial influence and policy of a kind, tolerant, and judicious treatment of the natives by Messrs. Everett and Halhed; these gentlemen having succeeded by kindness and perseverance in inducing a small tribe frequenting the tract of country contiguous to their station of Wandsworth to remain almost constantly upon it, the young men being employed in various capacities, not only as stockmen and shepherds, but as domestic servants; and although these gentlemen have settled nearly four years in the district, and stations in the neighbourhood have been attacked on various occasions, yet no outrage of any kind has been attempted on them."

Their station was not very remote from the scene of massacre at Myall Creek. The blacks were in both cases Kamilaroi. The

[1] Commissioners of Crown lands existed previously, but they did not reside in the "squatting districts" beyond the "boundaries of location.' From returns furnished to the Select Committee on the Bill, by the Commissioners, it appeared that in territory thus described there were 4380 persons (almost all males), 3300 horses, 233,000 cattle, and nearly a million of sheep.

only risk these kindly gentlemen incurred was the fact that outrages on the blacks at other stations might be revenged at Wandsworth; but they escaped it. Gipps (July 1842) expressed to them his sense of the services they were "thus rendering to the colony and to the cause of humanity."[1] In Port Phillip also the Rev. Joseph Docker of Bontherambo, succeeded equally in inducing the natives to trust in him and to work for him. But a neighbour, not content with shooting blacks on his own station, invaded Docker's, and shot at them there. Docker wrote to Governor Gipps, who at once cancelled the ticket-of-leave of a man who had been one of the invaders at Bontherambo, and ordered him to be sent to Sydney; thus punishing his employer as well as himself. Lord Stanley warmly approved Gipps' proceedings. Contrasting the results of Messrs. Docker's and Mackay's conduct in the same vicinity, he could "not (October 1841) divest himself of the apprehension that the fault in this case lies with the colonists rather than with the natives." At the same period, Mr. Latrobe, the Superintendent at Port Phillip, was reporting assaults and murders throughout his district, and especially in the western portion of it. When, according to Mr. Blair (already quoted), "the Whyte brothers were annoyed by the aborigines," the annoyed brothers having lost sheep, pursued the presumed reavers with an armed party nine in number. They overtook them with the sheep in possession. Mr. Latrobe reported to Gipps, "it appears that about thirty at least were killed." The Crown Prosecutor at Port Phillip was of opinion that "the natives were the aggressors," and that "the depositions of the Whytes could not be used against them;" "at all events the conduct of the natives would make the conviction of the parties very uncertain." In July 1843, three men, Hill, Betts, and Beswicke, were tried at Melbourne for killing several black women and a child at Muston's Creek (Osprey's station). One of the black protectors, Mr. Sievewright, arrived a few days after the murder and saw the bodies. Three white men swore that they saw the prisoners take guns from a hut and heard shots fired. One saw a black fall whom he "judged to be a woman by the shriek." The strange sequel to the evidence was that as soon as the "Judge commenced his

[1] Parliamentary Papers, vol. xxxiv. House of Commons. 1844.

charge to the jury, the foreman rose and said the jury had already unanimously agreed on their verdict, and that it was unnecessary for him to deliver any charge."[1] The verdict was "Not guilty." Gipps informed Lord Stanley that it seemed established beyond rational doubt that "the women and child were murdered by a party of white men who left Mr. Osprey's hut with fire-arms, and returned to it after about an hour's absence; that two at least of the persons who have been acquitted accompanied the party, and that there is no doubt of the identity of two or three others, though they have, I believe, left the colony." Lord Stanley replied: "Though I, of course, abstain from questioning the propriety of the verdict which acquitted the prisoners, I cannot dismiss the subject without recording my deep regret, that, from whatever cause, the perpetrators of so atrocious a murder should remain unpunished." South Australia and Western Australia were less notable for ill-usage of natives than were the Eastern Colonies. Mr. Eyre, the hero of the overland journey to King George's Land, was appointed (by Governor Grey) resident magistrate at Moorunde on the Murray river, and it was his duty to guard against collisions between the natives and the settlers. In this he was aided by acquaintance with the habits of the former. Captain Grey, after his exploration on the West Coast in 1837-8-9, forwarded to Lord John Russell a report on the best means of, civilizing the natives, and the report was sent to all Australian Governors as well as to New Zealand. He declared the natives to be "as apt and intelligent as any other race of men" he was acquainted with. Failure in civilization was due to the faulty colonial system. Kindly employment of natives should be encouraged by all possible means. If each European brought into contact with each new tribe had been wise, collision might have been avoided, but on the outer circle of progress to the interior, it could not be that many should be wise. Messrs. Everett and Halhed in New England, Mr. Docker at the Ovens river, and a few others might be singled out, who, in spite of the difficulties

[1] Parliamentary Papers, vol. xxxiv. An alibi was sworn to in the case of Beswicke. Beswicke's station was only seven miles from Osprey's, and evidence that Beswicke was seen at his own hut in February by one man, and at the latter end of February by another (who on cross-examination fixed the date as 23rd February) was sufficient for a willing jury.

caused by their erring neighbours, manfully succeeded in establishing confidence and maintaining peace without previous violence. The rule was to inspire terror by slaughter, and then to treat with contemptuous sufferance or marked ill-usage the remnant of the tribe. Governor Hutt's proceedings at Western Australia may be referred to with pleasure. The wild injustice described by Mr. Moore in 1833 could not exist under the new Governor. He had a smaller area of the English pale to control than was stretching out in New South Wales. In 1841 (23rd June), he offered a remission of eighteen pounds in land-purchasing to any colonist who employed a native for two years consecutively, and double that amount to any one instructing a native in any trade, or calling, or handicraft. He saw that the protector of the aborigines ought to be of high social standing to command the respect of the Europeans. He desired also a mission establishment. But he had no funds available. He saw the need of accepting, *quantum valeat*, the statement of natives, and he drafted a Bill to enable magistrates to receive their evidence in certain cases. Lord John Russell eventually approved its principle, but suggested an amendment, and when Hutt passed the Act and sent it to England Lord John advised the Queen to disallow it on technical grounds. Two protectors of aborigines were sent out, and Hutt stationed them at Perth and at York. Albany (King George's Sound) was "beyond our reach, independent of which Captain Grey, so long as he holds the appointment of resident, will amply supply the place of protector, and even without him, the aborigines of those southern districts, *from having been well treated and admirably managed from the commencement of our intercourse with them*, have hitherto shown themselves so tractable and obedient, and on such *good terms with the white people as scarcely to need one.*" He gave excellent instructions to the protectors, which were, he said, only to carry fully into effect the declared benevolent intentions in Her Majesty's instructions to himself. He passed an Act (1840) to make Rottnest Island a legal prison for committed or convicted natives, and sent it to England with his Aboriginal Evidence Act. Like the latter, the former was disallowed. It was objected that it delegated to the Governor in Council a power of legislation, in proclaiming bounds and making rules. If the Act

were deprived of this necessary and (under Hutt's care) wise provision, Lord John Russell would recommend its allowance.

Maugre these interferences, Hutt and the protectors, Messrs. Simmons and Moorhouse, did much for the natives. Hutt declined to follow the course adopted in New South Wales of establishing reserves. In Western Australia it was unnecessary, for the endeavours of the Government to obey the Royal Instructions had "not there been thwarted and borne down by the misconduct and opposition of the colonists." All opposition between the two races was (1841) fast disappearing. Hutt did not shrink from executing justice. Two natives were hung in 1840 for the murder of the wife and child of a settler in 1839. A third accomplice, Yambup, was apprehended and sentenced to death for the same crime a year afterwards; but Hutt, against the unanimous advice of the Executive Council, reprieved him until the Royal pleasure should be known, and confined him at Rottnest. Lord Stanley differed from Hutt as to the propriety of the reprieve, but allowed Hutt's course to be adhered to rather than order to the gallows a man already reprieved. He did not interfere with the proposition to remit purchase-money of land to colonists employing, or teaching trades to, the natives: and in 1844 he conveyed his satisfaction with "the system of native management" successfully carried out by Hutt, who by that time was able to report that the "native schools at Perth and Fremantle were making a steady and most satisfactory advance." Hutt had embodied in his system some of Captain Grey's recommendations, and Grey applied in 1843 for permission to remit in South Australia a portion of purchase-money of land. Lord Stanley thought the recent Land Act (5 & 6 Vict. c. 36) of 1842, a bar to the procedure in a direct manner, but sanctioned the application of like sums from that portion of the land fund which was set apart for the support and civilization of the natives. Lord Stanley forwarded to Captain Grey and to other Governors the gratifying proofs of Hutt's success, and in January 1844 Grey, in acknowledging them, stated that he had for a long time been in the habit of communicating privately with Hutt, that he was well aware of the successful result of Hutt's measures, and was "much gratified that they were so fully appreciated by Lord

Stanley." At the same time Grey was able to report favourably of the condition of the aborigines in his own territory. South Australia and Western Australia were free from the convicts who in Van Diemen's Land and New South Wales had cropped the soil with murderers, and whom Phillip only, while the colony was small, had in any degree controlled on its borders. It might have been hoped that no community of freemen would vie with the criminals of the past. But the example of Queensland from 1860 to 1880 was to show that crime was not confined to those whom the law had condemned.

There were mission stations in the interior of New South Wales.[1] The station at Wellington Valley was formed in 1832 by the Church Mission Society in England, and was aided by a grant of £500 from the colonial revenues. The missionaries declared in their first report that the children of the forest, though not less intelligent than Europeans, could not be influenced for good except by those whom they had learned to respect and love. They were not made for slavery, and would die under restraint. Affection made them willingly perform acts of service rendered as the fruit of friendship rather than as tasks of servants. In 1836 a report declared that many natives at the Valley believed in their Creator and their Redeemer. At Lake Macquarie, on the coast between Sydney and Newcastle, a mission station was superintended by the Rev. L. E. Threlkeld, who received the sum of £186 for salary and allowances as "missionary employed in civilization and in acquiring the language of the aborigines." He compiled an 'Australian Grammar.' His reports show how frequently the duty devolved

[1] The expenditure on the aborigines in 1841 was as follows:

Lake Macquarie.	Wellington Valley.	German Mission, Moreton Bay.	Wesleyan Mission, Port Phillip.	Total paid by the Treasury to various mission stations.
£186	£500	£494 14 4	£449 14 10	£1629 16 2
Paid to the Protectorate in Port Phillip.				7618 3 3½
Blankets and other distributed articles, throughout New South Wales				847 13 6
				£10,095 12 11½

This was the year in which the greatest expenditure was incurred. In 1837, the total was £2352 11*s.* 8*d.* In 1842, £9702 15*s.* 6*d.* Return: New South Wales Papers, 1843.

upon him of attending natives sentenced to execution. In 1835 he was summoned on such an errand.

"Charley was found guilty of murder, which he did not deny, even when arraigned, but pleaded in justification the custom of his nation, justifying himself on the ground that a talisman named Murramai[1] was taken from him by the Englishman, who with others were keeping a black woman amongst them, was pulled to pieces by him, and shown to the black woman, which, according to their superstitious notions, subjects all parties to the punishment of death, and further, that he was deputed, with others, by his tribe to enforce the penalty which he too faithfully performed."

Such was the official report of Threlkeld to the Government as to the Australian black, who fell like the Spartans obedient to his country's laws. The missionary travelled with him to the place of execution. "We walked to the fatal drop through an escort of military; he kneeled and prayed; we ascended the gallows; he stood firmly, saying, 'I am now cast away for death;' he repeated the prayer, 'Lord Jesus, receive my spirit;' the drop fell, and eternity must develop the triumphs of the cross."

In 1837 Threlkeld's annual report urged that it was anomalous that a black man should be tried in an English Court for killing another black, inasmuch as if "acquitted he must again stand trial amongst his own people," and in the English Court black witnesses were rejected, "although now proclaimed subject to and under protection of our Courts. I respectfully call the attention of the Judges of our Courts, of the Legislative Council, and of the British Parliament to the peculiarity and injustice of their case." The point was brought before the Supreme Court in Sydney in 1836, and it was decided that the aborigines were amenable to the colonial law for offences committed amongst themselves. Judge Willis, in 1841, held a different view at Port Phillip, and Gipps consulted the Judges in Sydney, who adhered to the decision of 1836; but replied to none of the arguments of Willis. Lord Stanley declined (1842) to refer the case for the opinion of the law officers in England,

[1] The law which debarred women and children from knowledge of this and other matters connected with the Australian ceremonies has been treated in Chapter II.

when at Willis' request Gipps forwarded the papers with a view to such a reference. The Legislature in the colony languidly temporized with the case by supporting the missions with £500, and voting £1000 for the annual dole of blankets and provisions. In the same year, in surveys, £65,000 were expended in carving out the homes of the blacks for sale, and £52,000 in police and gaols for controlling the new tenants of the appropriated country. The British Parliament was too far from the scene to legislate upon details. Secretaries of State were more or less impressed with the solemnity of their position, and Lord Stanley, in 1842, instructed Sir George Gipps with regard to the new Land Statute, 5 and 6 Vict. cap. 36, passed with "scarcely a dissentient voice in either House of Parliament," that it was desirable that the expenditure of fifteen per cent. of the proceeds of land sales should be retained by the Crown "in its own hands,"[1] for the benefit of the despoiled heirs of the soil. By a grim perversion of moral relations it was urged by some persons in the colony that the expenditure on the police created to check atrocities like those at the Myall Creek ought to be reckoned as an expenditure upon the natives.

In the Port Phillip district, G. A. Robinson, the pacificator of the Tasmanian natives, was called over to be Chief Protector of the Aborigines. The captives of his persuasive powers had drooped and died. The pleasant Maria Island looking to the sun on the east coast was in 1831 denied to them as a home, although Robinson and the colonial chaplain petitioned for it. At first they had been collected at Swan Island, bleak and barren. Thence they were moved to Gun Carriage Island, the abode of sealers, who were evicted to make room for them in 1831. From that rocky prison they mournfully gazed at the hills of their native land; and as they gazed, died so rapidly that remorse affected their gaolers. One man told Mr. Bonwick, "they died in the sulks, like so many bears." The survivors were moved to Flinders' Island, where only morasses afforded a substitute for the rivulets of their former homes. The settle-

[1] The 19th section of 5 and 6 Victoria, cap. 36, enacted that the gross proceeds of land sales should be applied as directed by Her Majesty or the Treasury, one-half at least being devoted to emigration to the colony wherein the revenue accrued. The instruction with regard to the fifteen per cent. set apart for aborigines, was therefore a command consonant with the Act.

ment was fixed where south-west gales expended their full force, and when the natives were landed there they seemed to forebode that they had been taken thither to die. A sergeant was foolishly put in command there at first, and dreading or affecting to dread insurrection, he carried fifteen men to a rock where he left them without food or water for five days. They were relieved by a passing vessel, whose captain was told by them that the sergeant had removed them in order that criminal intercourse with their wives might not be interfered with. Their tale was denied by their gaoler, but Colonel Arthur at once secured the intelligent services of Lieutenant Darling of the 63rd Regiment as Commandant, and was able in the following year (1833) to thank him for "conciliating the poor creatures, and in developing many excellent qualities in their character, for which few persons are willing to give them credit." Lieutenant Darling in effecting this change was compelled to banish altogether the debauched sealers, who had frequented the island. Under his rule the travelling Quakers, Backhouse and Walker, found the natives "very docile." But still they drooped and died. In 1834 only one hundred and twenty remained. Darling had then left, but a superintendent, and the good catechist Robert Clark, were there. In 1835 the pacificator Robinson took charge of the remnant, and industry, education, and religion flourished in the island. He established a newspaper amongst them, entirely "written by the aborigines on half a sheet of foolscap, and sold for twopence for the benefit of the editors." In 1837 the "only drawback was the great mortality." The caged eagle may thrive, and the exiled man may build himself a far-off home; but for the imprisoned spirit of the captured savage, bound to his miniature Caucasus in Bass's Straits, wistfully looking towards the beloved Ringarooma to which he could never return, there was but one escape—by death. It came rapidly. Robert Clark,[1] the catechist, smoothed the horror of it, and became their well-beloved. They called him Father Clark. In the infinite mercy rendered to those who love God and keep his commandments the deeds of this man were needed as a sweet savour in an atmosphere which stank with the cruelties of others. In 1835 Arthur wrote of the natives: "Their number has been

[1] 'The Last of the Tasmanians.' James Bonwick. London: 1870.

reduced to one hundred." Yet Robinson had captured 250. In 1838 the conciliator was invited to Port Phillip. The twenty-nine men then living at Flinders Island begged to accompany him. Governor Franklin engaged to meet liberally the question of expense. Father Clark (late catechist, now called storekeeper), with Robinson's approval, wished to retain the privilege of instructing the aborigines when removed to New Holland. But it was not to be. A Select Committee of the Legislative Council of New South Wales was appointed (14th August, 1838) to consider the whole question relating to the aborigines, and Franklin's communication was referred to the Committee, consisting of Bishop Broughton, the Collector of Customs, the Auditor-General, Mr. Blaxland, and Mr. Macarthur. The Committee took evidence from Robinson, who vainly advocated the removal of his charge from their island prison. It was strongly deprecated by another witness. In a progress report (12th October) the Committee declared that it was not desirable to grant the petition of the natives. They apprehended serious dangers to society if the "fierce and hostile deportment" once shown in Van Diemen's Land should be manifested by the aborigines of New South Wales when acquainted with the newcomers. Dr. Lang in his account of the matter imputed special blame to the Bishop, but the Committee appear to have been unanimous and decided. They recommended the re-appointment of a Committee in the following session, and left all other questions open.

Various superintendents held sway at Flinders Island after Robinson's departure. None of them had his zeal or aptitude for their task. Degradation of the prisoners in the grasp of civilization was apparent, and became notorious. Troubles, unnecessary to be related, were not unknown. In 1847 it was determined to remove the feeble remnant to Oyster Cove; Flinders Island was leased with its live stock. The natives were only forty-four, of whom twelve were men. Yet a Hobart Town newspaper denounced the projected return, and predicted a renewal of warfare. Such blind guides are there, who presume to represent public opinion, and would control it. Dr. Jeanneret, deemed too friendly to his charge, was suspended from the office of Superintendent, but was re-instated by the Secretary of

State (Lord Stanley). His enemies rid themselves of him by abolishing his office, and removing the blacks to Oyster Cove. Dr. Milligan, who removed the natives to Oyster Cove in 1847, was nominally their protector and guide. But he did nothing for them, unless the compilation of a vocabulary of their dying language was a boon. Even in this his services were such as might have been rendered in London as well as in Hobart Town, for he did not study the people themselves, or care for them. But they did not leave Flinders Island unfriended.

Father Clark accompanied his black children, and saw them settled at their new home. Their houses were clean. They were contented. Clark hoped that the terrible death-rate of Flinders Island might be arrested. His children at first shared his hopes. But still they died. Clark's own house was ill-situate and ill-conditioned. His wife was removed to Hobart Town, and died there. Clark returned to his black children, smitten with grief, and in a short time he died also. When Bonwick, who chronicled the fortunes of the Tasmanians, visited Oyster Cove in 1859, one of the native women, Mary Ann, showed him a hut.

"Here" (said my weeping companion), "here poor Father died. I attended him along with his daughter, night and day. But all the people wanted to do something for him, for all so loved him. And then he would talk to us and pray with us. He would tell me what to read to him from the Bible when too weak to hold the book himself. How he would talk to us! When he thought he was going to die, he got the room full, and bade us good-bye. He held up his hands, and prayed for us. He did love us. And then he said while he was crying, 'Mind you be sure and all meet me in heaven.' The poor creature could not tell me any more, but fairly sobbed aloud. [This woman was a half-caste, and had been carried off by Robinson when her mother and others were released by him from their enforced residence with sealers in the Straits. Her husband, a thoroughbred native, was called George Arthur Walter, and was so formed, that, according to Bonwick,] 'if standing on the steps of the Piazza di Spagna in Rome, he would have been often selected as a model for his magnificent head.'"

Why protract the tale? When Clark died, the hopes of his children were annihilated. The woman, Mary Ann, told Bonwick:

"We had souls in Flinders, but we have none here. There we were looked after, and the bad whites were kept from annoying us. Here we are thrown upon the scum of society. They have brought us among the offscouring of the earth. We are tempted to drink and all bad practices, but there is neither reading nor prayer. While they give us food for the body they might give us food for the soul. They might think of the remnant of us poor creatures and make us happy. Nobody cares for us."

This was in 1859. Yet the death-rate was not rapid enough to satisfy some prophets of the gospel of money and political economy. The cost per head was thought too high, and the allowance for the establishment was diminished. In such a state who can wonder at the speediness of the sad end? Bonwick says:

"They were chilled and disheartened. They would all die soon. Then why should they till the ground? For whom would the potatoes be grown? What would be the use of a dairy? Books were left unopened, or looked at with glazed eyes. They read their fate. In such a mood they cared for nothing. They lost interest in all about them. Everything seemed to remind them of their end. Was it strange, then, that when temptation came near, they fell? When the drink was brought secretly, was it strange that they took it as the Aryans their divine Soma, the drink of the gods, the reliever of sorrow, the life-giver, the joy-friend?"

Dr. Milligan, their nominal guardian, was in Hobart Town, and for years the occasional glance of a constable represented the tutelary care of the Government. When Bonwick's 'Last of the Tasmanians' was published in 1870, only Truganina, the heroine of the pacification, was alive, and she passed in 1876 into the land of spirits, where no further injustice can be done by man to her or to her race. Their grief for their pious father Clark is a proof, if proof were needed, that Robinson's career substituted something better for the brutality of earlier days. That it was not better still, is now beyond remedy, but not beyond regard. Under the eyes of one generation, a whole race has been swept off the earth. Truganina was born in the year in which Governor King established the first settlement at Van Diemen's Land, 1803. When all the rest of her people had died, the manager of the Oyster Bay refuge carried her to Hobart Town, the last of her race. After her troubled life she

was still hale, though she had lived threescore years and ten. Some observers doubted whether she could be so old. She knew the prurient barbarity of scientific Europeans, and shortly before her death, said, "Don't let them cut me up, but bury me behind the mountains." Within the span of one dark life is contained all that history is called upon to devote to the discovery and destruction of a people. She had been one of those whom Robinson the protector, when leaving Van Diemen's Land, took with him to Port Phillip. He hoped to derive assistance from them in his new office of protector. He was not supplied with means to support them as retainers. They did not remain with him. They took up their abode with some runaway sailors; there were quarrels amongst them, and in the end the blacks were tried for murder of two white men. Robinson stated to the Judge that he "had never found the black men wanting in humanity," and that there had been much provocation on the part of the white men. Nevertheless, against the men the majesty of the law was invoked, and they were judicially destroyed. The women were sent back to their imprisoned country-women in Tasmania. The execution of the men took place almost simultaneously with the declaration of a Melbourne jury, that the Judge need not deliver a charge to them in the case of white men arraigned for shooting black women, the jury being resolved to acquit the prisoners. At that date, in Port Phillip, the destruction of the natives went forward by old methods at a rate which might have satisfied the most exacting. But there was a further sharpening of the edge of slaughter to which it was reserved for the Government perhaps unwittingly to be a party.

A body called "native police" was to be organized. They had European officers over them, but the men were natives. When they were sent to a distant part, where an outrage had been committed by the blacks, whether in self-defence, revenge, or otherwise, they were often let loose like bloodhounds upon the comparatively defenceless tribe. To take the lives of enemies was an honourable thing in the eyes of Australians, and the guilt of their deeds is hardly at their own doors. Yet some of their employers have hugged themselves in the conceit that the constitution of the corps was good, because it saved the whites the trouble of killing, and threw the onus on the natives.

If such judgments have been heard amongst the educated, who can wonder if they abounded among the meaner whites?

Before the corps was formed, however, Mr. Robinson's Protectorate was relied upon. Lord Glenelg appointed assistant protectors, and urged upon the colonial authorities the claims of the natives. The heroic Lord Derby wrote to the Governor (December 1842):

"I cannot acquiesce in the theory that they are incapable of improvement, and that their extinction before the advance of the white settler is a necessity which it is impossible to control. I recommend them to your protection and favourable consideration, with the greatest earnestness, but at the same time with perfect confidence, and I assure you that I shall be willing and anxious to co-operate with you in any arrangement for their civilization which may hold out a fair prospect of success. It is impossible to contemplate the condition and prospects of that unfortunate race without the deepest commiseration."

Mr. Latrobe, then Superintendent at Port Phillip (but acting under the Governor of New South Wales), was kindly and just in character, but there was a jealousy on the part of some of the settlers against the Protectorate. Robinson was despised by men who, though better educated than he, had less of nature's nobility. As early as 1843 they hoped to procure the abolition of his office. The estimated number of blacks in Port Phillip was then six thousand. There was much to do amongst them, but they who had to do it had not authority amongst the colonists. The protectors as a rule were contemptuously treated. Mr. Latrobe considered that the Protectorate at Mount Rouse was a complete failure (1842), and Gipps told Lord Stanley that he was painfully convinced that the protectors had effected no good that could be compared to the irritation they had created, though he was loth to stop their proceedings while any good result could be hoped for. They were, however, maintained for several years.

In 1849 Mr. Foster, a member for Port Phillip,[1] propounded in naked deformity the views which condemned them. A Select Committee, of which he was chairman, advised that all

[1] 'The New Colony of Victoria, formerly Port Phillip,' by J. F. L. Foster. (London: Trelawney Saunders, 1851). It must have been difficult to persuade a thoughtful reader that the loss of their hunting grounds could enable tribes which lived by the chase to procure food with facility.

asylums for the natives should be abolished, and that the proceeds derived from them should be devoted to education of the whites. In a small book which Mr. Foster published in 1851 he declared that the decay of the race was not so rapid as had been reported; that "most exaggerated stories have been circulated about collisions between the black and white population;" that "some few barbarous murders did no doubt formerly take place upon both sides, but the best feeling now generally prevails;" and that some people "attribute the decrease in their numbers to the facility with which they now obtain food without severe labour as previously." The Protectorate was abolished in 1850, the Governor and the Executive Council of New South Wales making at the same time recommendations of a kindly character as to the treatment of the blacks.

Sir Richard Bourke had in 1836 formed a school at Melbourne (where now the Botanical Gardens are), but after three years it was abandoned. Another was formed in 1841 at the Dandenong Creek, but was discontinued in 1843. A third was established in 1845 at the junction of the Merri Merri Creek with the Yarra river (not far from the scene of Batman's parchment treaty with the tribes), but it was extinguished in 1850. The Wesleyan body, with laudable zeal, formed a mission station at considerable cost on the upper Barwon river, westward of Geelong, and received some aid from the Government for a time. Mr. Latrobe, though he had not strength to withstand the current of opposition to any expenditure for the dying race, was too kind-hearted to turn from them in their distress.

There was a Mr. William Thomas, who had been in 1837 appointed (in England) assistant protector of the aborigines in Port Phillip. He officiated in that capacity until the Protectorate was abolished, and in 1850 was made guardian of aborigines near Melbourne. There the kindly honest man roamed from place to place, deprecating wrongs and promoting good deeds towards his charge. He did what he could, doled out such supplies as were afforded to him, and procured medical attendance for the sick.

Thus ebbed the life of the race until the fruits of voluntary mission enterprise forced upon all thinking people that there was still a solemn duty before the intruding white men if they

would be in a position to answer without shame the questions—"Where is thy brother? What hast thou done?" Eminent among the agents of good was the Rev. F. A Hagenauer, a Moravian missionary, who applied to his self-sacrificing toil abilities which in any field of worldly enterprise were calculated to win renown. In devotion to their task no distinction need be drawn between him and his Christian fellows. When a Board was appointed by the Government in 1860 to watch over the interests of the aborigines of Victoria they found four establishments in existence. A station at Mount Franklin, near the Loddon; another at the Acheron river; and two missionary stations, one at Yelta on the river Murray, the other at the Wimmera, where were the Revs. F. W. Spieseke and F. A. Hagenauer. At that date the six or seven thousand natives estimated as having been found in Victoria in 1836 had dwindled to little more than two thousand under the causes described in these pages.

The mission stations in New South Wales in the time of Governor Gipps were not prosperous. The mission lands at Wellington valley were coveted. There were seven thousand acres, and the whites had surrounding millions. But they were not content. They petitioned Gipps to form a township there.

"O si angulus ille
Proximus accedat qui nunc denormat agellum."

The angle at the junction of the Bell and Macquarie rivers could no longer be spared for its natural owners. Gipps declined to take it from them. He "reluctantly" closed the mission at Lake Macquarie in 1841, where the Rev. L. E. Threlkeld had laboured for seventeen years, but where the decay of the tribes had left the shepherd without sheep. The German mission to the aborigines,[1] due to the energy of Dr. Lang and promoted by subscribers in Sydney, as well as aided by the Government, did not prosper. Not even Lang's vigour could sustain it.

One of the hardest worked men in the colony took up the cause of the weak. Richard Windeyer, a barrister overwhelmed with briefs, which he conscientiously toiled at by day or by night, was at all hours in the Legislative Council, as unflinching

[1] The missionaries were trained in Berlin, by the Rev. J. Gossner, once an Austrian Roman Catholic priest, but afterwards a Protestant pastor in Berlin.

as in the Supreme Court. In the course of the session of 1845 he obtained a Select Committee of eight members to consider the condition of the aborigines. The first witness examined by six of these senators was Mahroot, a native of Botany Bay, nearly fifty years old. In the gibberish which had been spoken to him by the settlers he detailed how drink and disease, imported by the whites, had swept away the mass of his countrymen. Reared amongst the intruders throughout his life, his mind was yet under the influence of native tradition when questioned about deaths in his tribe. To him who knew the habits of the blacks the reporter's note "No answer" conveyed volumes. Asked how many of his tribe remained alive, he said, "Only four—three women, and I am the only man." Did he ever think of God? "I believe a little knowledge of it. Other black fellows believe there is something over them. I believe in my own mind there is a God." Did his father and mother so believe? "They believed there was something over them." He had been in a whaling vessel, and earned twenty or thirty pounds on a voyage, and on returning "went along with the sailors and threw it away altogether."

The Committee had before them a genuine result of the effects of civilization. They were not without sound advice, if they could have appreciated it. A Roman Catholic functionary told them that as regarded "intellectual order he had no reason to think the natives lower than ourselves in many respects." If they were isolated from the whites on large tracts to which the whites should not have access, and where Government would care for them, a worthy experiment would be made on their behalf. The uncivilized tribes of Paraguay were "lower in what the Committee called the scale of humanity" than the Australians, and nevertheless attained in the second generation a considerable degree of civilization, as testified by Muratori. Dr. Lang was on the Committee, and deserved to feel pleasure when the Rev. Mr. Schmidt was examined. He was connected with the mission station at Moreton Bay, established by Lang's energy in 1837. The English Government had paid the outfit and passage money of each clerical missionary, and gave annually an amount equal to that subscribed voluntarily, The mission flagged for want of means, and the aid of Government was with-

drawn, but not before a project had been countenanced by the Governor for removing the station to the Bunya Bunya region, where the seeds of the large cones of the *Araucaria Bidwillii* formed periodically the food of numbers of natives.[1]

The Committee sent circulars to magistrates throughout the interior, but few to whom they appealed had studied the habits of the race so as to be able to furnish trustworthy information, nor was there one member of Committee who was in a better position. Mr. Bradley was a native of the colony, but like the majority of settlers knew no more of his sable countrymen than the millionnaire who frequents Rotten Row knows of the inner life of the dwellers in Whitechapel. The Commissioner of Crown Lands for the Murrumbidgee district wrote that he was compelled to keep a strong party of police "to keep in check" the populous tribes on the Murray river. As new stations were formed lower down the river provocation by the whites had irritated the blacks, and in 1843 they attacked and drove away the occupants of two stations. The usual result was brought about in a short time.

At Port Phillip a preponderance of opinion was in favour of abolishing the Protectorate, but the chief protector, Robinson, again appealed for more suitable legislation. He had reason to "fear that the destruction of the aborigines had been accelerated from the known fact of their being incapacitated to give evidence in Courts of law." A measure to relieve them from this incapacity was rejected in the session of 1844 by men whom Robinson had no power to persuade, and of whom Robert Lowe was one. Robinson recorded gratefully that the better class of servants obtained by immigration were superseding the riotous and lawless convicts and emancipists who accompanied the first settlers to Port Phillip. There were still more than five thousand aborigines there. The assistant protector, Mr. Thomas, wrote that in addition to physical causes of tribal decay there was an "indifference to prolong their race on the ground, as they state, 'of having no country they can call their own,' hence should there be a birth the infant is artfully put out of the way." Mr. Lowe's sable brethren thus proved in their dim way that they

[1] As yet the Bunya Bunya pine retains in common speech the native name.

had feelings which his skilful rhetoric had denied them. Nothing came from the labours of the Committee, but it deserves to be recorded that Windeyer procured it, and amidst the slavery of an overtasked life worked upon it.

Amongst the kind deeds of those who strove to recompense as best they might the disinherited owners of the land one may be mentioned. For the great work of Mr. Gould on 'The Birds of Australia,' his brother-in-law, Mr. Stephen Coxen, was active in collecting materials. He was a settler near Invermein at the Middle Brook, a tributary of the Hunter river. He was often accompanied by the natives in his wanderings, and appreciated their wonderful knowledge of the habits of birds, beasts, and insects. He offered to one of them the advantages which education confers. He adopted a boy and sent him with his own sons to one of the best schools in the colony. There the lad displayed talents which enabled him to hold a respectable position amongst his companions. He carried off prizes, and, as Mr. Coxen was at that time prosperous, a satisfactory career seemed open to his young friend. But the crisis and panic of 1842 and 1843 were fatal to the patron, and his property was swept away. The lad obtained precarious livelihood as a clerk, and died young; but not the less was the act of Mr. Coxen one of the efforts of the just, deserving to be recorded by one who knew his genuine kind-heartedness, and grieved at his ruin.[1]

Though a new constitution was expected when he assumed office, Sir George Gipps was Governor and legislator from the beginning of 1838 to the end of 1843. Within the period of his responsibility there occurred a season of pressure which ruined many and threatened others, who had been looked upon as the wealthiest of the land. They who had been previously frugal and had abstained from large expenditure in their homesteads, or on charitable objects, had stored the means of meeting the calamity. They had also inured themselves to habits of economy. There were some masters who by firmness, kindness, and the art of governing themselves and others, had made even convict labour

[1] Yarrundi, his homestead, passed away to strangers. If there be any reader of these lines who has shared with their writer the genial hospitality of Yarrundi he will be glad to be reminded of a name now sought vainly in maps.

profitable. The cessation of assignment of convicts brought every man face to face with daily pecuniary demands. On establishments where convict labour had not really been cheap it had seemed to be so. When it was withdrawn there was imperious necessity for cash. But cash was not at hand. The stoppage of the system of granting lands had been the means of encumbering land-holders with debt. Large areas were bought after the Regulations of 1831, while the price was five shillings an acre; and when in 1839 it was raised to twelve shillings, the men who fondly hoped to create family estates in the land, continued to buy; and in order to do so were compelled to borrow. The apparent prosperity of 1837 made them build castles in the air. Prices of land and of stock rose to fabulous rates, and a wary observer might have foreseen that they had no substantial basis. Speculation withdrew capital from legitimate employment, and the proper industries of the community languished for want of capital. The large sums diverted from ordinary pursuits to the purchase of land were withdrawn from the accumulations, or heaped upon the indebtedness of the purchasers. The settler, encouraged by a bank to buy an estate, was bound hand and foot to his creditor. He had borrowed to live, and he lived to be only a borrower. All persons had joined in blowing a new South Sea Bubble. They expected that the morrow of fact would be as their yesterday of hope.

For a short time the demand for cattle and sheep at South Australia and in Port Phillip fostered the illusion. Profits easily obtained were lightly wasted. Sir George Gipps, who visited Melbourne in 1841, told his Council (in September 1842[1]) that the quantity of "champagne and bottled porter consumed during the period of this fictitious prosperity was enormous. Why, the whole country for miles, almost for hundreds of miles, round Melbourne is strewed to this day with champagne bottles." Drought, the scourge of the Australian grazier, wasted parts of the land. The lean survivors of

[1] Parliamentary Papers, vol. xxxiv. p. 148. House of Commons, 1843. The Governor said that the articles had better have been "sunk in the sea than brought into the colony." The orgies of the labouring classes were not the only means of waste. Some of the employers gave way to the mania for dissipation.

decimated herds might be seen in 1839 and 1840 dragging their weary limbs along to the virgin pastures of the interior. Near every watering-place were carcases or skeletons of animals that had lain down to die. The graziers were so weighted with debt that they could not devise means for supplying their new stations with food, while flour was sold at one hundred pounds a ton, and the carriage of stores over pathless wilds was too costly for their means. Rice became a staple article of food in the interior, and as cheapness was the object the quality was frequently bad.[1] The most prudent were sorely cramped in their operations. With regard to others, absolute ruin seemed equally imminent whether the lives of sheep and cattle could or could not be preserved. In those days all sheep were shepherded, and the wages of shepherds were a large item. The subsequent practice of fencing with more or less rough material had not been thought of, nor could it have been adopted without capital. Capital was not in the land. The wild dog had not been poisoned at that time, and sheep were folded at night. The cessation of transportation not only paralyzed industries by its suddenness. It altogether destroyed some of them. The discontinuance of a large expenditure through the Imperial Commissariat sensibly affected the circulation, and the contracts which had absorbed much produce and supplied producers with cash, were extinguished or dwarfed.

The necessities of the Government made it withdraw deposits from the banks. The banks reclaimed their advances amidst wide-spread ruin. Their own measures increased it. There were no buyers unless at rates which seemed wanton waste of past industry, and which yielded a small proportion of debts incurred in times of over-blown expectations shared alike by borrower and lender. A firm which held securities in many and remote districts was in jeopardy, and gloom overspread all faces. It was said that if those men should fail the colony would fail.

[1] The author, travelling in those days with a black boy, arrived at a cattle-station where for six weeks the men had been without any provision except the herd of cattle and a little salt. He had a few pounds of flour, bought as a favour at a shilling a pound, and some tea and sugar. The hosts joined him in a meal which made them merry. He left with them the residue of his store, and they gave him meat for his journey. After a few days drays arrived bringing them rice.

A bank, already largely involved with the firm, stepped forward, but in doing so was compelled to make arrangements with another bank, which quitted itself (by the transaction) of bills accepted by the tainted firm. The end was that the weaker bank fell into the vortex of insolvency. The power of the directors to contract a liability to the strong bank of one hundred and fifty thousand pounds, was contested in the Law Courts. It was said to be bad technically and in principle. The amount exceeded the average of the total circulation of bills in the colony, and was not far short of the total circulation of notes. But the transaction was sustained on appeal to the Privy Council,[1] and misery was in many desolated homes of depositors and shareholders of the ruined bank of Australia. How relief was finally afforded must be told hereafter.

Although it has passed into a proverb that figures are deceptive, it is proper to give a few. The coin in the colonial treasury, which had averaged £188,000 from 1836 to 1839, fell to £38,000 in 1840, and to nothing in 1842. It accumulated in the distrustful banks from £200,000 in 1836 to £443,000 in 1842. The imports which had after the drought of 1827 risen for two years, declined to £420,000 in 1830, after which they were augmented gradually to about a million and a quarter in 1837. The exports in like manner had fallen in 1827 and 1828 (to less than £100,000), but recovered, and in 1837 were £760,000. In 1840 the dire needs of the colony swelled the imports to more than three millions sterling. In 1837 the registered value of imported grain, flour, rice, &c., was £61,000. For the years 1839, 1840, and 1841 it largely exceeded £200,000. Of rice 176,000 pounds had been imported in 1837. Nearly seven million pounds were imported in 1840. The flour imported in 1837 was about 1,500,000 lbs.; in 1841 it was about fifteen millions of pounds. The exports to meet the inward trade showed less abrupt changes. They rose gradually, until in 1839 they were £950,000. In 1840 they sprung to £1,400,000, subsiding in 1841 to about one million.

[1] In the first instance there was a lengthy trial in which the jury could not agree. Then after a trial at bar which lasted nearly three weeks, judgment, though not unanimous, was given in favour of the defendants, but it was reversed in England.

The yield from agriculture diminished during the drought of 1838 and 1839. In 1840, stimulated by prices and by distress, it increased in every form. Of the heat-enduring millet, of which 283 bushels had been grown in 1839, 3300 were garnered in 1840. Potatoes were produced in 1840 in fourfold quantity. The struggle for existence animated every household. The land sold in 1842 had realized less than £15,000—a sum insufficient to meet the expense of the survey department. In 1840 the Treasury had received £316,000. In 1843, although the bulk of the cattle and sheep in the colony[1] were depastured beyond the "Boundaries of Location," there was no purchased land there, and licensees of the Crown could grow nothing for sale, though they might cultivate for their domestic uses. A terrible tale is unfolded by the Auction Duty Returns. The sales had increased gradually until they amounted to £321,346 in 1837. In 1840, although the value of all effects had diminished, the amount was £1,246,742; in 1841, £963,696; in 1842, £686,088. In those days many a cherished heir-loom, carried reverently from the fatherland, was swept into the gulf of ruin without saving its treasurer from distress.

It was thought that if the prices which had prevailed in 1837 had been obtained in 1840 the sales by auction would have yielded a return of six millions sterling. The first had been chimerical, the last were grinding facts, which represented the desolation of unnumbered homes. The ruin of many seemed the prelude to the ruin of all. There were persons who had the means of buying food, and the competition to supply the market brought down the price so low that little or no profit remained to the grazier. Nor was this the worst. For a hundred miles or more from Sydney the country was principally barren, except where scattered homesteads occupied patches of good land. Travelling stock became ill-conditioned by the long march to

[1] New South Wales Legislative Council Proceedings. 1843.

	CATTLE.	SHEEP.
In the "Sydney or Middle District" there were within the counties	304,886	1,596,417
Those within the three counties in the Southern or Port Phillip district were	19,419	185,332
In the Sydney district beyond the boundaries of location	491,541	1,804,096
In Port Phillip there were	81,373	1,404,333

Sydney. Inferior animals were utterly unsaleable, and the cost of driving them to and fro was more than any buyer would give. There was no minimum price below which the grazier could be assured that even his fat stock would not fall.

At this juncture, when the possession of large flocks seemed to presage wider ruin, and mortgages could not be met by the sacrifice of freeholds and of the stock depastured upon them, an intelligent settler, Mr. Henry O'Brien of Yass, invited public attention to a remedy. Travellers in Russia had observed that, to dispose of surplus stock, many animals were slaughtered for the sake of their fat, for which there was constant and unlimited demand. Mr. O'Brien tried the experiment in January 1843, and made known the result. Even ten shillings a head might be obtained, and a minimum of six shillings for each sheep was expected. Wonder was mixed with the pleasure with which the announcement was received. Unlike the meat-market in Sydney, the European tallow-market could not be glutted. Establishments for boiling down sheep and cattle were erected at Sydney and in the country. The meat was wasted, but the ragged remnants which emerged from the vats were used as manure. Occasionally where, as at Goulburn (in Argyle) there was a nucleus of consumers, a butcher consented to give a penny a piece for a thousand legs of mutton, which he retailed by the pound to his customers. As soon as their possessions were found to be exchangeable, even by killing them, hope reasserted itself in the minds of settlers, and soon after Mr. O'Brien's experiment was made known, Wentworth by a Lien on Wool and Stock Bill converted hope into reality. The live stock of the colony represented at all times a certain value. The export of tallow in 1843 was increased elevenfold in 1845, and that of hides fourfold. Many colonists dated their escape from ruin to the operation of Wentworth's Bill and the advice of Mr. O'Brien. Yet neither Wentworth nor O'Brien claimed the title of discoverer. They applied to the colony, in time of need, principles and practice extant elsewhere under different conditions, and they modestly contented themselves with what they had done. But a long gloom preceded the dawn, and it was the distressful aspect of affairs[1] which the new Governor had to confront. It

[1] Amongst the fluctuations of value at the time one or two may be

is not surprising that one of the Acts required at an early date was an Insolvency Act. The law as enacted by Governor Darling dealt only with imprisoned debtors, who could, on petition, obtain relief at the discretion of the Court. A law passed by Sir Richard Bourke in 1832, and twice renewed, was confined in the same manner to relief of prisoners.

In 1838, a Select Committee of which Chief Justice Dowling was chairman examined a Bill brought forward by Sir George Gipps, and due to the suggestions and labours of Judge Burton. It was framed after a law in existence at the Cape of Good Hope with which he was familiar while acting there as Judge. Witnesses preponderated in its favour, but the Council shrunk from legislation, and in 1839, after examining another witness, Mr. (afterwards Sir) Alfred Stephen, then newly-appointed Judge in New South Wales, a Committee of the Council recommended further postponement. Prosperous times might have permitted delay, but the drought and accumulated disasters of 1839 demanded action. An honest but hapless debtor could obtain no release from a hard creditor. A dishonest one could not be barred from giving undue preference to a creditor conniving at fraud upon others. Fraudulent conveyances could not easily be set aside, nor could the general body of creditors combine for their common benefit. The Act known as Burton's Act was passed in 1841 after sedulous attention of Gipps and his Council. It was arraigned by some as having smoothed the way for unprincipled insolvents, and multiplied insolvencies; but there is no reason for believing that they would have been less numerous without it, and its tendency was to make many of them less disastrous.

Sir George Gipps vehemently desired to introduce a system of local district taxation and control of expenditure. Unfortunately

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mentioned. A new-comer bought a flock of ordinary ewes at two guineas a head, paying nearly one guinea a head in cash, and giving bills for the residue. He was unable to meet them all. The sheriff sold the young colonist's effects, and the original owner of the sheep bought them back at six shillings a head. At a later date an impecunious grazier saw his flock sold at five-pence a head to satisfy the claim of the Government for arrears of quit-rent on his land. A man engaged in business stated before a Committee (in 1843) that he had proved claims of £33,000 against insolvent estates, and had received about sixpence in the pound.

his measures were so framed that it was thought that, failing local co-operation, he desired to step in with the power of the general government to enforce his will. His blunder, if he nursed any such desire, was akin to that which afterwards arrayed almost the whole colony against him on the subject of extracting revenue from occupants of Crown lands. He stumbled also in 1840 (as mentioned previously) upon the old impediment of the emancipist question, when he dealt with the incorporation of Sydney and of Melbourne.

The Census Bill (passed in October 1840) aimed at procuring information in a manner which the Chief Justice and Judge Stephen thought repugnant to the law of England. To compel a man, being free, to answer under penalty whether he had ever been transported was "repugnant alike to justice and to law." In a short session convened two months afterwards, an "explanatory clause or rider" was brought under the review of the Council, with the representation of the Judges, in conformity with the provisions of the Constitution Act (9 Geo. IV. cap. 83, sec. 22), and was attached to the Act. It enacted that nothing in the law should authorize the asking of any question relating to the civil condition of any person, and that no penalty should be incurred by any one for refusing to answer any such question.

Replies to his despatch announcing the withdrawal of his Municipal Bills did not reach the Governor in time to enable him to deal with the subject in 1841. But in 1842 he summoned his Council at an early date, and vehemently commended it to their consideration. He wisely urged that until expenses of police, public buildings, roads, bridges, and other works were paid out of local funds, there would be perpetual strife to obtain for each district as large a sum from the Treasury as possible, and extravagance would be engendered. "When, on the contrary, each district defrays its own expenses, it becomes the evident interest of each to avoid extravagance, and to spend no more of its own money than is absolutely necessary." A "Directors of Police and Public Works Bill" was laid before the Council at once, with separate Bills to create corporations at Sydney and Melbourne. But the country, if ripe for the experiment, was loth to undergo it. The drought of 1839, and the relapse after over-speculation (which Gipps admitted "had

grievously shaken the colony," might well dismay the colonists. Petitions against the Police and Public Works Bill were poured in. Some declared that it would be ruinous. Others desired that it might be postponed until, under a new Constitution, elected representatives might discuss it. It was averred to be contrary to constitutional principles to impose direct taxation by an unrepresentative legislature. After many weeks the second reading of the Bill was rejected.

The Corporation Bills were more successful, though there was much contest as to the qualification of burgesses. Fixed first at forty (the Bill being ordered "to be presented to the Governor fairly transcribed") the Attorney-General was employed to propose a reduction to twenty pounds of annual rated value; but an amendment moved by an unofficial nominee decided upon twenty-five pounds, and with this qualification in Sydney, as in Melbourne, the Bills became law. Almost at the end of its course through the House, Wentworth carried at a public meeting a petition denouncing the inadequacy of the Bill, because it did not confer on the Sydney corporation the endowments previously petitioned for. Wentworth on this as on some other occasions bore down all opposition. An editor of a weekly newspaper which supported the Governor was active against him. Wentworth's petition, signed by five thousand persons, was presented by James Macarthur, with whom (though they had acrimoniously assailed him for his course with regard to the Corporation Bills in 1840) the Patriotic Association were not unwilling to work. His character was above reproach. All men respected him as just and benevolent, even when they differed from his opinions; and he had publicly declared in 1841 that the "long-agitated emancipist question might be dropped, and that it would be unwise in a new Bill to have any clause whatever upon the subject." The question was indeed fast settling itself. The rough labour and dissipated lives of the bulk of the convict class were rapidly annihilating it. To induce the citizens to accept in a limited degree the task of self-government Acts were passed appropriating sums in Sydney and Melbourne in aid of police maintenance; but it is hard to direct from above the steps which to be effective must be made amongst the people themselves. Subsequent Acts in succeeding

years suspended for limited periods so much of the Corporation Acts as related to the levying of police rates, on the ground that it was expedient for the Government to retain the management of the police and to provide the requisite funds.

In the session of 1842, which was to be the last of the Council nominated by the Crown, the old protests against casting the police expenditure on the colonial exchequer were renewed. Sir John Jamieson and Mr. John Blaxland added to their former reasons that the colony was in "a ruinous state;" that "establishments for raising the principal staple of the colony did not pay their expenses;" that the "immense and increasing list of insolvents," "the want of credit," were such that no relief could be expected under the existing "system of management." They demanded reduction of expenditure, especially as to police. Gipps thus explained in a debate on immigration (Sept. 1842) his own opinions:

"How are we to get money to pay for the importation of immigrants? The first thing is to reduce the expenses of government, and if the Council will but go hand in hand with me, I doubt not that much may be done in this way; but what as yet have you done, gentlemen? At the commencement of the present session I introduced two measures calculated to lessen the expenses of government, and which, had they been passed as I presented them, would, I firmly believe, have had the effect in a few years, if not immediately, of enabling us to apply to immigration every shilling of the revenue which is in any way derived from land, that is to say, not only the produce of the sale of lands, but quit rents, ordinary rents, and also the produce of licenses to depasture stock beyond the boundaries of location; but of these measures one (the Police and Public Works Bill) was absolutely and entirely rejected; the other (the Corporation Bill) was only passed by accompanying it with a bribe of between £70,000 and £80,000 to the people of Sydney and Melbourne. I am determined, however, to persevere in the most rigid economy; and still endeavour, if possible, to apply the whole of the money derived in any shape from land to the purposes of immigration; and until this shall have been done, or at least until the attempt shall have been made, I do not think we ought to have recourse to a loan even if it were in our power to get one."

As in 1841, so in 1842, a Select Committee on immigration had been appointed. Immigrants had rapidly arrived so long

as the funds derived from land sales were large. When those funds declined, the Council urged that a loan should be negotiated, and in the mean time the immigrants, whose passages were paid from funds accruing while the sales were large, continued to arrive when financial depression had reduced the land fund almost to zero. But the greater the depression the greater was the need of labour to save the pastoral interest from the extinction which Sir J. Jamieson and Mr. Blaxland deemed imminent. So clogged were the wheels of progress that in 1842 there was a temporary arrest of employment of immigrants on arrival. The unemployed were chiefly of the artisan classes, who shrank from accepting employment as shepherds, and clung to the metropolis. The decline in the value of wool made high wages ruinous to the flock-owner, and those who were accustomed to high wages scorned the offer of low.

The knotty point of education engrossed the Governor's attention. With regard to Sir Richard Bourke's plan he wrote (9th December, 1839) that all that his predecessor had done was to send to England for books, and to contract for a school-house at Wollongong, sixty miles from Sydney; that in fact Bourke's "plans were considered to be virtually abandoned." Then rose a practice of giving State assistance equal to that accruing to any school from private sources, which Gipps properly denounced as having an "obvious tendency to create more schools than were required or could be maintained," and seeing "the great actual mischief of the system," he proposed that all the Protestants should receive aid in combined schools, and that corresponding advantages should be given to Roman Catholic schools. The manifest injustice of giving to one denomination separate and therefore special aid because it refused to join with others, and of saying to all the others, "You shall have no aid at all unless you join with others whom I point out to you," did not press itself upon Gipps, but was seen by others. In 1839 he brought forward resolutions for establishing public schools to "comprehend all classes of Protestants," and securing "corresponding advantages for the schools of the Roman Catholics." Fifteen members were present when Bishop Broughton opposed the scheme in a speech, which was subsequently printed. Cogent as his arguments were deemed, his language was courteous, and he

disavowed a desire to thwart Government measures. With the aid of his official phalanx Gipps might perhaps have carried his resolutions, but he "thought it more prudent not to press them," and they were withdrawn. At that date under what the Governor called the "half and half" principle—

The Protestant orphan schools were receiving	£6000	per annum.
The Church of England parochial schools	2950	„
The other denominations	5370	„

In the end of 1838 Bishop Broughton vainly opposed the sale of the resumed church and school lands, except on condition that the proceeds should be devoted to the objects of the old trusts. Gipps made light of his arguments, and the Archbishop of Canterbury vainly brought his proposals before the Home Government in 1839. The Marquis of Normanby yielded to a motion for returns, but there the matter ended.

The principles established in New South Wales, as to the support of churches, also governed Port Phillip. In Van Diemen's Land Governor Franklin followed Bourke's example in promoting the passing of the requisite Bills. They were warmly opposed by Archdeacon Hutchins and nearly all the clergy of the Church of England, who urged that they compromised the community by the acceptance of the position, that 'every variety of religious sentiments was entitled to support without any reference whatever to the conformity of those sentiments to the word of God."

The legislation bore the marks and the fruit of haste. The Act passed in 1837 contemplated the existence of a church and a minister's residence before a minister could be appointed. An amendment was passed in 1838 to enable a minister to receive salary at an earlier date. But the greed of zealots abused the law, and a subsequent Act (1840) enabled the Governor to refuse a building grant if he thought a church not required at any place by the applying denomination. In 1841 a further Act withdrew salaries already allotted, unless within six months of their allotment the building of a church should have been commenced, and enacted that even where it had been commenced, if it should appear to the Governor that due diligence had not been exercised, he might direct that no further aid should "be

given towards its completion." The universal charity which Bourke had thought to introduce by indiscriminate patronage of all forms of faith, fostered an unwholesome competition for State aid, which could only be kept in check by abrogating the principle of the law, and substituting the discretion of the Government for the desires of the sects.

As it was during the Government of Sir George Gipps that the English Parliament addressed itself to the task of legislation upon the subject of the Crown lands in Australia, it is desirable to summarize the conditions of the problem. It had become a matter not only of importance in the colonies, but of interest and discussion in England. The dealing of different Governors with the territory has formed part of the narrative of their reigns, and need only be referred to briefly here. Grants of land, and assignment of convicts, were in their power. In process of time it became impossible for them to continue to exercise it. The very numbers of colonists would have made it impossible for a Governor to supply their wants with intelligence, and if he had to depend upon others in exercising his nominal discretion he became a creature instead of a moving power.

The sudden influx of free settlers, whom the abolition of Macquarie's system of favouritism attracted to the colonies, drew general attention to the subject. Each settler of good repute had friendly eyes bent upon him, and the small crowd gazing from the cliffs of Albion at departing friends grew larger and larger. Even in Parliament there were occasional debates about New South Wales. There were Companies in the control of which members of both Houses took part; trade increased, and imports from the colonies attracted attention.

It was felt that the mode of granting land required modification. Mr. Bigge in his report in 1822 had suggested the sale of land, but matters were not then ripe for the adoption of his suggestion. On the contrary, his report increased the flow of immigration and capital, and there was no thought of demanding payment from the Australian Agricultural Company for the million acres granted to them in New South Wales. The principle of receiving payment had been introduced by quit-rents, long before lands were sold by auction. Grants without

purchase on condition of residence, improvement, and cultivation, had always been made with a view to the employment of convicts by the grantee, and the consequent lightening to the Government of the cost of convict maintenance.

The measure of expected profits upon outlay limited for a long time the quantity of land taken up by any grantee. To encourage settlement, the earlier grants to "meritorious convicts and free settlers" had been for a great part made free of quit-rent for ten years, after which period there was to be a quit-rent of sixpence for each thirty acre farm. To free settlers larger quantities were given, and the Governor had power to make the grant liable to quit-rent or not. Before 1810 it was usually 2*s.* per hundred acres, after ten years; afterwards about 15*s.* per hundred acres.

	ACRES
In New South Wales, up to 1810, Governors had granted	177,500
Macquarie between 1810 and 1822 had granted ...	400,000
Up to 1831 other Governors had granted	3,386,250
	3,963,750

Thus nearly four millions of acres had been alienated by the Crown, and though quit-rents were chargeable upon much of them, it could not be expected that they would be collected. In Van Diemen's Land the grants made, on similar conditions to those existing in New South Wales, amounted at the end of 1833 to 2,136,894 acres. In Western Australia, colonized only in 1829, there had been granted at the end of 1834 the portentous area of 1,526,721 acres. In the last-named colony no quit-rents were intended to be exacted, except (under regulations of 1830) with regard to cases where conditions to cultivate might not be complied with. Official testimony was afforded in 1836 to a Select Committee of the House of Commons, that in New South Wales and Van Diemen's Land quit-rents were in arrear, although they were "redeemable at twenty years' purchase," and did not begin to run until the end of terms varying from seven to ten years from the date of purchase.

The large grants to the Australian Agricultural Company in New South Wales, and to the Van Diemen's Land Company in Van Diemen's Land, were charged with quit-rents of one and a half per cent., on a valuation of one shilling and sixpence per acre.

These quit-rents were to commence at the end of five years from the date of the grant, and were redeemable at twenty years' purchase. The employment of convicts in large numbers was to be a mode of redemption also. Calculating the cost of each at £20 in New South Wales (and £16 in Van Diemen's Land) the Australian Company was to be free from all quit-rent by showing that it had relieved the treasury of £100,000. The Van Diemen's Land Company obtained similar remission by proving an expenditure of £25,000. These charters bore date in 1824 and 1825, and prove that up to that date the *quid pro quo* between the Government and settlers was land for the cost of maintaining convicts. The maximum of grants in the colony was 2560 acres, but by special direction of the Secretary of State a Governor could give more. In this manner Mr. Potter Macqueen obtained 10,000 acres at Segenhoe, with a reserve of 10,000 more. Other members of Parliament, and Sir Thomas Brisbane,[1] Lord Sligo, and Mr. Browne, were grantees in like manner.

In making grants the possession of capital, wherewith to improve the land, became a touchstone, and £500 was roughly estimated as entitling a settler to a grant of 640 acres, or ("a section"), one square mile. But allegations of nepotism in administration of land, and in assignment of convicts, and the inherent difficulties in the task of doing justice or giving satisfaction, combined to make Governors desirous to adopt a less irksome method.

Land Boards were appointed by the Governors to assist in determining whether the applicant had means, and was a fit person to receive a grant. From this condition of affairs there was not much transition to a state in which the purchase of the land should be the test of means. Gibbon Wakefield's theory of selling at a sufficient price broke upon the world in 1829, and made disciples. Lord Goderich (more generally known as Lord Ripon) in 1831 took the decisive step of framing Regulations for

[1] There may be seen in some works on Australia an imputation that Sir T. Brisbane granted 10,000 acres to himself. A clerk in the Colonial Office was asked the question, "Was Sir Thomas Brisbane Governor at the time?—Not when he received his grant." House of Commons Papers. 1836. Vol. xi. In 1826 Lord Bathurst directed Governor Darling to make the grant to Brisbane.

the sale of land by auction, starting from a minimum price of 5*s*. per acre. A deposit of ten per cent. was to be paid at the sale, and the balance in one month. Surveys were to be made; the land was, if possible, to be sold in lots of 640 acres; the Government exercised complete discretion as to the lots to be sold, coals and precious metals were to be reserved, and the tenure was to be free, and common socage with nominal pepper-corn rent. Care was taken to guard against alienation of the sea-shore. Except for navigation or commerce, no land within a hundred feet of high-water mark in any harbour, bay, or inlet, was to be open for purchase. Lands advertised for sale, and unsold, were to be put up to auction for lease of one year, but were always liable to sale. There were special regulations under which to retired officers and discharged soldiers a portion of purchase-money was remitted. Large grants of land for church and school purposes were at the same time discontinued, and the dissolution of the church and school corporation followed.

The proceeds of land sales were for some time small. The average price in 1834 was only 8*s*. per acre. An upset price of 5*s*. was not calculated to serve Wakefield's objects. It neither restrained the speculator from taking up a larger area than he could use with due regard to the general weal, nor did it discourage the labourer from diverting his energies into channels unprofitable for himself, and ill-adapted to serve the true interests of the community.

The members of neither class were capable of understanding Wakefield's reasoning. All thought to better themselves not by means of general prosperity, but by grasping at something "secret, sweet, and precious." The Swan River experiment revealed the fact that, as regarded enormous grants of land in few hands, Wakefield's vision had been prophetic: but none the less was he distrusted as to the premature spreading of a labouring population or yeomanry over the land. It was in vain that he insisted that his "sufficient price" must work advantageously to the labourer.[1] He was denounced as illiberal by men who did

[1] Gibbon Wakefield's evidence. House of Commons Committee. 1836. "If you raised the price above the sufficient price you would condemn the whole class of labourers to a longer term of service. It appears to me then that a burthen would be cast upon them in particular, and a very

not see the harmony of his two propositions. They were like children playing with a barometer, and striving to procure fine weather by tampering with the machine which records the condition of the air. They would not yield assent to fixed laws, but they learned to suffer for their heresies.

The occupation of Crown lands beyond the "boundaries of location" had meantime been largely entered upon for many years. It has been seen that the term "squatter" was at first affixed only to lawless invaders. The "settler," who sent his flocks and herds beyond the settled districts, soon obtained the title. The character of the "squatter," no less than the depraved habits of convict servants of the settlers, brought about the relations between whites and blacks already described. The imposition of an assessment on stock, at the request of the stock-owners themselves, has been narrated in connection with the trial and execution of seven Europeans in 1838, for the massacre at Myall Creek, and it would have been well if the imperiousness of Gipps, and the rapacity of some of the representatives of the settlers, had not by their resultant forces converted the tenure by annual license into a claim to pre-emptive right.

In this as in other cases the keen Gibbon Wakefield saw the danger. Questioned in 1836 before a Committee of the House of Commons as to the right of pasturage, he argued that on the right of pasturage there ought not to be a restriction of price similar to that which he would impose on freehold land.

"As the object of a fixed price for all freehold land would not be served at all by any restriction upon the use of pasturage, I should allow the utmost possible liberty of use, but never the liberty of appropriation, subject to such conditions as would secure the use; . . . the pasturage ought to be let as the land ought to be sold, uniformly and fairly, first come first served, always being liable to be brought into the Government sales whenever any body wished to obtain, by paying a sufficient price, the freehold property in the land."

Golden words indeed, but not appreciated. The bitterness of a quarter of a century would have been averted if in their struggle with Sir George Gipps the settlers had not asserted and

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grievous one; that of being kept for a longer term than was necessary in the state of servants."

obtained from Earl Grey a recognition of their claim to become, by mere occupation, entitled to the ultimate freehold of territories far beyond their power to use for the national good, and to which the incoming immigrant should always have had access when ready to pay the proper price. The colonists of South Australia, when they rejected Earl Grey's pernicious Orders in Council in 1847, were merely followers of Wakefield's advice in 1836. Nor did Wakefield subsequently see cause to retract his opinion. In his 'Art of Colonization' (1849) he combated the objection that his "sufficient price" would be thwarted by the free use of natural pasturage, or would prevent it. He declared that "the theorists of 1830 never thought of compelling settlers to pay for the use of natural pasturage. According to their theory it is the extreme cheapness not of natural pasturage, but of land for cultivation, which occasions scarcity of labour for hire. Labourers could not become land-owners by using natural pasturage." To use it, skill, capital, combination of labour for division of employments, and unremitting constancy of the combined labour were required. The business was altogether unsuitable to the common labourer or small capitalist. The term of the labourer's working for wages

"would depend not at all on the cost of natural pasturage, but wholly on the price of freehold land. It is for this alone,—for the sort of property in land which a labourer would require in order to cease working for hire, and to set up for himself as a competitor with his former employers in the labour market—that the theorists of 1830 have ever proposed a sufficient price. According to their view of the matter the words a 'sufficient price' for the use of natural pasturage are unmeaning or nonsensical."

The source of wealth supplied by nature ought indeed to be used without let or hindrance from the Government. Facilities should be afforded, not obstacles imposed. He denounced the policy which "put a price upon the use of natural pasturage for no purpose but that of getting money out of the settlers," as a facile and pleasant sort of taxation to which the payers were compelled to submit, or to be ruined. When the Act 9 and 10 Victoria, c. 104, and the Orders in Council (9th March, 1847) made under it, were framed, Wakefield's caution against creation of a title to Crown lands on the part of the users of natural

pasturage was thrown to the winds, by all parties. The ramifications by which the Crown tenants, thenceforth known as "squatters," were connected with the general community made them a power in the land; and though they could not evade the gripe of taxation they set up a constructive title or pre-emptive right which was the *fons et origo* of many subsequent ills to their own class no less than to others. Meantime, the sales of land under Lord Goderich's Regulations of 1831, had brought money into the colonial exchequers, and had contributed to the introduction of immigrants. While Western Australia[1] was stagnant under the enormous free grants which effectually locked up her lands, money was obtained in New South Wales and Van Diemen's Land by auction sales commencing at five shillings; and after the inquiry of the House of Commons Committee in 1836, the Colonial Secretary, Lord Glenelg, authorized the Governors to raise the price to twelve shillings per acre, and to increase it if necessary. The South Australian Commissioners saw danger in the fact that land could be obtained more cheaply in other colonies than in their own. They represented in 1836 that South Australians would be aggrieved if, while they were compelled to exact £1 for an acre, an emigrant could obtain four acres for that sum in contiguous New South Wales, separated

[1] In 1838, under the presidency of Mr. W. Hutt, M.P., a Western Australia Company was formed to render Western Australia attractive by applying to it the principles on which South Australia had been founded. The Company advertised in 1840 that they had purchased from the Government extensive blocks of lands at Leschenault for their settlement, Australind. They would issue land orders in England on receiving money at the rate of £1 per acre for lots of 100 acres, and the holders were to draw lots in London for "priority of choice," to be made afterwards a Australind. Half of the purchase-money would be reserved for expenses of the Company, and half would defray the cost of immigration and public improvements: free passages being given to the immigrants in question. In 1842 it was notified that half of the receipts for land would be devoted to immigration. Side by side with the large free grants at Perth the Australind offers were unlikely to attract. But in 1841 the general price was raised in Western Australia, first to 12*s.* and then to £1 an acre. The special motive of the Company's existence was superseded by these changes, and we read in W. H. Knight's 'Western Australia' (1870) that it failed financially, though "it was the means of introducing to the colony many of the best of its settlers, to whose energy and enterprise much of the present prosperity of the district (Bunbury) is owing. Very recently much excellent land belonging to the Australind Company has been thrown open for sale. . . ."

only by a parallel of longitude. They asked for uniformity throughout Australia.[1] Lord Glenelg, while disclaiming responsibility for the efforts of Wakefield's disciples, and contemplating with lively concern "any event which justly appears to threaten South Australia with disappointment or loss"—reminded the Commissioners that when they embarked in their scheme it was matter of general notoriety that in the adjacent colonies the upset price was 5*s*. Governor Bourke when called upon for a report (1837) was unable to recommend an alteration of that price. Nevertheless, in August 1838, Governor Gipps was instructed to "substitute 12*s*. for 5*s*. as the upset price of land of ordinary quality;" and he promptly issued a notice altering the price "without distinction as to whether the lands had been previously advertised at a lower rate or not." Governor Franklin[2] thought himself justified in such a distinction in Van Diemen's Land, and Gipps, finding what had been done there, consulted his Council, assimilated his proceedings to Franklin's, and was supported (October 1839) by the new Secretary of State, Lord John Russell.

Gibbon Wakefield never admitted that his theory was tested by what was done in South Australia. A Committee on South Australian affairs, inspired by him and his friends, recommended

[1] It will be remembered that faithless to their principle, the Colonization Commissioners, after fixing the price at £1, issued (Oct. 1835) "modified regulations" by which land was sold at 12*s*. an acre. When the newly-formed South Australian Company had taken up numerous allotments at the reduced rate, it was an object with the promoters to enhance the value of their commodity. To enable themselves to buy cheaply, they tempted the Colonization Commissioners to reduce the price. Having bought at a low rate they desired that by the raising of the "uniform rate" they might be able to sell at a high one. In March 1836, the wavering Commissioners resumed the standard of £1. These facts, though not to be forgotten, do require insertion in the text at this point. As an instructive commentary upon them it may be added that in 1839 the Commissioners officially stated that allotments in Adelaide (sold by them at 12*s*.) were worth in good situations from £1000 to £2000 an acre.

[2] Franklin grotesquely suggested that as some of the Port Phillip settlers had migrated thither from Van Diemen's Land, a moiety of the proceeds of land sales there should be paid into the Hobart Town Treasury. Lord Normanby did not concur with him, but to allay his fear that land sales in Van Diemen's Land would be arrested, instructed Sir George Gipps to place the highest minimum price on land at Port Phillip which was compatible with his other instructions.

that the minimum price should "be raised considerably above the present amount of £1 per acre." But the Land and Emigration Commissioners, Messrs. Elliot, Torrens, and Villiers, who had, as concerned with all colonies, superseded (1840) the special South Australian Commissioners, shrunk from the proposition. They were unwilling to be the practitioners upon whom blame would fall if the experiment should fail. Lord John Russell desired them to consider the whole subject. He would himself have no difficulty in preferring the South Australian principle of a uniform price in any new settlement, but he saw obstacles to its introduction where auction had prevailed.

On the 28th January the Commissioners reported in favour of sale at an uniform price; but, apprehensive of partial inconvenience if it were imposed suddenly in New South Wales, recommended an exception in favour of auction in the nineteen counties of that colony. Outside those boundaries they "conceived that the public lands throughout New South Wales should be disposed of at one uniform price." They would apply the same principle to Port Phillip and Moreton Bay, "if that situation should be thrown open for settlement."

Lord John Russell had just received from Sir George Gipps a despatch deprecating the discontinuance of auction, and he referred it to the Commissioners for further report. On the 26th February they combated Gipps' opinions. They did not see, as colonists saw, that it was easy to drive flocks and herds from New South Wales to Adelaide, but impossible to drive them to Perth. They did not foresee the imminent peril of South Australia. They averred that South Australia, founded in 1837, had cost the mother country nothing; had raised an ordinary revenue of £20,000; had 70,000 sheep, 13,000 cattle, and a population of 8000; while the land revenue was nearly £150,000. Western Australia, eight years after its foundation, had but 12,000 sheep, 1800 cattle, with 2000 people. Its ordinary revenue was £4500, its land revenue *nil;* the system of sale by auction having only recently been sanctioned there. They argued at great length from these facts against the animadversions of Sir James Stirling (Governor of Western Australia) upon the South Australian land system. They could not modify their opinions. On the 15th April, 1840, however, they con-

sented to allow auction in townships likely to be seats of government, and at harbours on the sea-coast. They would limit the authority of the Governor of New South Wales, as to disposal of land and its proceeds, to the territory between the 31st and 36th degrees of S. latitude; would abolish the privileges of military and naval settlers in obtaining land; would allow purchasers to pay money in England and receive land orders entitling them to any surveyed land they might find unappropriated in the colony; would allow such purchasers to nominate a certain proportion of labourers to be conveyed to the colony; would allow the local authorities to reserve, from alienation at a fixed price, only the sites of principal towns or seats of commerce, except in cases where reserves had already been made; and would appropriate the whole of the land "fund to convey labour to the colony or administrative district in which the land may have been sold." They advised that in the contemplated New South Wales Bill power should be given to the Commissioners to raise money on the security of future sales to promote emigragration, and "that the deeds of grant shall convey to the purchaser everything above and everything below the surface."

They had hardly made these recommendations when Lord John Russell referred to them another despatch in which Sir George Gipps contended vigorously against applying the uniform price to New South Wales.

"I cannot imagine anything that would throw this government and the whole colony into more complete confusion than the arrival of an order from your Lordship to put a fixed price on land and allow the first claimant to take as much or as little as he liked, in any part within the limits of our twenty-two counties. If extended beyond those limits the confusion would, of course, if possible, be greater."

The Commissioners saw nothing even in this despatch "to alter or modify their opinion," and said so within three days. They framed regulations (August 1840) for "separating Port Phillip from the rest of New South Wales for all purposes connected with the disposal of land." All the territory to the south of the counties Murray and St. Vincent, and of the Murrumbidgee and Murray rivers, was to be the southern or Port Phillip district, reaching to the eastern boundary of South Australia. Within it land was to be sold at the fixed uniform price of £1 per acre in

sections of half of a square mile, or 320 acres. A Northern District was also to be carved out of New South Wales, but the operation was to be for a time deferred. In the older parts of New South Wales (the Sydney District) "land continues to be sold by auction at the upset price of 12*s.* per acre in lots of 640 acres, or one square mile." Nominations by purchasers entitled them to free passages for labourers at the rate of one adult person for each £20. Their recommendations of 15th April, 1840, were adopted by Lord John Russell, who, on the 31st May, 1840, sent a celebrated despatch to Governor Gipps. He issued instructions under the Royal Sign Manual revoking former instructions; constituting under the designation of the Port Phillip District all the territory above described; and defining how lands should be surveyed and paid for. In his despatch he declared, "All deeds of grant throughout the whole of the colony should henceforward convey to the purchaser everything below and everything above the surface." There might be an exception in the case of "mines of obviously an immediately high marketable value." In such a case competition was to be called in, but as a rule reservations of minerals were unnecessary and inconvenient. In these few words he disposed of Prerogative in Royal minerals, which a few years afterwards were to pour hundreds of millions of pounds sterling into England.

With equal unconcern he fixed the upset price of land "for the present" at £1 per acre, and desired "that no town sites should be reserved inland, and that even on the coast only the probable situations of considerable sea-ports should be reserved." The instructions as to granting all minerals were immediately accepted.

On the 5th December, 1840, Sir George Gipps notified in the 'Government Gazette,' amongst other published regulations for the sale of land: "No reservation is to be made of minerals, except in very special cases, where mines of great value are known to exist. The deeds of grant are to convey to the purchaser everything below and everything above the surface."[1]

[1] If grantees of land had thenceforth insisted on compliance with this regulation in express terms in each grant, the question of the right to gold in the soil would have assumed a different phase in later years. But ignorant of the treasures which were afterwards to be found, the grantees

But the proposed dismemberment of the colony was not so promptly acquiesced in. A special session (at which the rider to the Census Act, necessitated by the objection of the Judges, was enacted) enabled the Legislative Council to confront the difficulty.

Governor Gipps laid Lord J. Russell's despatch before his Council on the 8th December, 1840. They were aghast. On the 10th, after protracted discussion, they unanimously adopted a resolution soliciting Her Majesty's re-consideration of the matter. They viewed "the dismemberment of the territory" with dismay, and prayed that other limits might be appointed so as to "secure to New South Wales the course of the principal rivers discovered and explored by the enterprise and at the expense of the settlers." A committee was appointed to prepare an address which, four days afterwards, was adopted.

Earnestly but loyally they maintained their objections, not to the formation of other colonies, but to the cramping of New South Wales; and they prayed that the southern boundary of New South Wales might be "a line drawn from near Cape Howe to the source of the river Hume or Murray; and from thence the course of that river itself until it reaches the 141st degree of E. longitude, and that the northern boundary may be the 28th parallel of S. latitude from the sea-coast to the same 141st degree of E. longitude." Thus in one week united counsels averted the blow struck at the integrity of the colony, and almost dictated the future course of the English Government. The debate in the Legislative Council was printed in a pamphlet in Sydney. The impress of the strong mind of Bishop Broughton is everywhere remarkable. "My suggestion is," he said, "that in order to secure to this colony its fair and due share of advantage, its sea frontier should commence from Cape Howe or from the Ram Head, which is very little to the westward, and should extend as far north as the 28th degree of south latitude; that its boundary to the southward should be the river Murray from its crossing the 141st degree of east longitude to its source, and from thence a line drawn to Cape Howe or to

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were careless as to the form of grant, and the Government in only a few instances conformed to the Orders in Council and their own regulations.

the Ram Head." Gipps himself took part in the debate and supported the Bishop, whose suggestion yet lives in the boundary between Victoria and New South Wales.

A public meeting was held to support the view taken by the Legislative Council; and Gipps, resolute always, took upon himself, at any rate for a time, "not to obey his instructions in reference to Port Phillip." That callow settlement, ever procacious, at the age of five years plunged eagerly into a battle for separation. Public meetings[1] in Melbourne adopted petitions praying that the boundary objected to by New South Wales might be maintained. The denizens at Port Phillip considered themselves unconnected with any penal settlement, while in the same breath they prayed for separation from New South Wales, of which they formed a part, and which they taunted as such a settlement. Though many of them had migrated from Sydney with stock, they averred that they as "colonists of Australia Felix cared little for what has long been considered the great question by the elder colony, that, viz. which respects the rights and social position of the emancipist population." It was but natural that though only about ten thousand in number they should be giddy. The rich lands they had found, the proximity to the sea, the bracing climate, the exuberance of production, the intoxication of success, and the air of hope, had exalted them, and the procacity they so early evinced has characterized many of their successors. They were sometimes prouder of their faults than wise people would have been of their virtues.

Their petition elicited no immediate response from England, and ardent champions consoled themselves by assailing the Government of New South Wales for robbing Port Phillip of its revenues. A local historian,[2] while publishing statistics proving that in 1840 the general revenue (£56,744) from 1836 to that date, had been largely exceeded by the expenditure (£89,483), sheltered his animadversions upon the New South Wales Government, under the plea that all the proceeds from land sales in Port Phillip ought to have been locally expended. He averred

[1] In December 1840, at an enthusiastic meeting Alexander Mollison, Redmond Barry, Cunningham, and Arden are names which appear prominently as guides of opinion.

[2] T. McCombie. 'History of Victoria.' Melbourne: 1858.

that a comprehensive view of both branches of revenue would show that Port Phillip had been robbed of £157,484 6*s.* 7½*d.* at the end of 1842. That any charge for the cost of general government should fall on Port Phillip was scouted as legalized plundering.[1]

[1] It may be convenient to state accurately the facts. In 1846 (*temp.* Sir G. Gipps) the New South Wales Government recommended that, whenever separation of Port Phillip should be sanctioned, the balance of each revenue should be divided "according to the proportion in which each colony shall have contributed to that revenue during the year ended on the 31st December preceding the date of separation." Sir George Gipps had laid down a rule that "so long as Port Phillip formed an integral portion of the colony of New South Wales, the revenue raised in either district should be expended for the joint benefit of the whole colony," and his successor concurred with this rule (Despatch, Sir C. Fitzroy to Earl Grey, February 1850, Parliamentary Papers, 1851, vol. xxxv. p. 10). When separation was sanctioned in January 1849 (but not consummated till June 1851), Mr. Latrobe suggested that the division of the balances should take effect from January 1849. The New South Wales Government adhered to their first proposal as regarded the general revenue, but waived it as to the territorial, on the ground that, under instructions from England, each district had borne its own immigration expenses, and that outstanding debts were secured on the different revenues respectively. They made this concession with a knowledge that it was favourable to Port Phillip, whose "share of the balance is more than double the share of the debt," while "the balance accruing to New South Wales is little more than a fifth part of the amount of debt for which she was liable at the time of separation." (New South Wales Executive Council Minute, 19th March, 1852.) The Duke of Newcastle referred the matter to the Lords of the Treasury in 1853 as regarded the general revenue, the colonies having concurred (as to the territorial, he said) in "Mr. Latrobe's proposal, which may be considered very favourable to the Province of Victoria." The Lords of the Treasury thought the "date of legal separation" the correct one. When separation took place the balances due to Victoria were £33,452 from the general and £61,544 from the territorial revenue, and it was found that the advances made in anticipation by the mother-colony for the service of her departing daughter had exceeded the amount to which the latter was entitled. The Duke of Newcastle in his final despatch (22nd April, 1853) directed, therefore, that the differences—£236 on the General, and £11,124 on the Territorial Revenue—should be refunded by Victoria to New South Wales. This arithmetical constraint was sorely felt, but not much complained of in public, by those advocates of separation who had accused the New South Wales Government of "robbing Port Phillip." Mr. McCombie's 'History' is silent about it. The fact that New South Wales had computed the proportion of general expenses of government chargeable to Port Phillip from 1836 to 1849 as £86,280 (the revenue collected there or in Sydney on account of Port Phillip, during the same period having been £1,238,313), was highly offensive to those who like McCombie denounced Sir G. Gipps

Sir George Gipps (in 1841) adverted to the proceeds of land sales in Port Phillip as affording the means of promoting immigration, and thus replacing in "the older parts of the colony the labour and capital which the opening of Port Phillip had drained from them." His economic care was spurned. The men of Melbourne were offended. They were few, but unanimous to resist robbery. They fancied that the people in New South Wales were equally unanimous in a desire to rob, although of the more numerous and widely dispersed community in New South Wales the majority knew little of their southern brethren, except as customers for flocks of sheep or herds of cattle, and as withdrawers of workmen. It will be found that the recalcitrance against authority thus early developed reappeared in after years, and was the worst enemy of those who displayed it.

It was not unnatural that the pioneers in Port Phillip should be elated. They attributed their prosperous condition not to the fertility of the Crown lands but to themselves. They were as plants which would deny the genial influences of the air and the sun. Yet they might have taken warning from the annual returns that the day might come when their own importance would be annihilated by the crowds which would follow them. In 1837 there were less than a thousand white people in the district; in 1838 there were more than three thousand; in 1839 there were more than four thousand; in 1840 more than four thousand fresh immigrants arrived. But still the pioneers were infested with the idea that not to the British Government, not to the colony of which Port Phillip was a part, not to the influence

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as a plotter for "the spoliation of the Southern district." The arithmetical contention in Victoria as finally stated may be found in the Victoria Yearbook of 1874, where Mr. Hayter, Government Statist, declares that the difference between revenue received and expended in Port Phillip from 1836 to 1851 was £291,587, after deducting £102,842 on account of expenses of general government. The deduction was made, he says, on a "purely imaginary" estimate. Whether the deduction was equitably made is fair subject for discussion. The usual averment at the time was that there ought to have been none. Startling results would follow if such a principle were put forward in England, and Liverpool should assert a claim to all the Customs' duties collected at the Mersey. Sir G. Gipps did not rest the case upon any calculation of per centages, but upon his duty to expend the revenues for the general good.

of capital from abroad, but to themselves was due every advantage which they possessed.

It was early in 1840 (before ten thousand souls, including women and children, were in the settlement) that they were leagued to obtain separation from New South Wales. They declared that their "local interests" were at "direct variance"[1] with those of Sydney; their "most rapid communication by land" occupied three weeks; that "by sea frequently takes a much longer time, and can never be depended upon." In January 1841 they prayed that Her Majesty would adhere to the boundaries announced by Lord John Russell with regard to their district, and replied to the arguments which had prevailed in Sydney and caused those boundaries to be altered. They had with Sydney "few common interests, and no mutual sympathies." They "rejected the parental claim thrust forward by the middle district." It was true that flocks and herds had been brought from New South Wales by "many originally settled in New South Wales," "but these are not the men who strive to retard the advance of Port Phillip."

"Immediate separation" was the watchword of all who had stepped into the inheritance over which the English flag had waved from the time when Governor King sent Robbins in the Cumberland to repel French pretensions in 1803. They were in 1841 shaken by alarms lest their own district should suffer contraction. It was suggested in England that the South Australian boundary might be extended eastward so as to include the valleys of the Wannon and the Glenelg rivers. The inhabitants at Melbourne were prompt to put forward pleas against a proposition which compelled them to enact in their own persons what they denounced as grasping and unjust in the dwellers in Sydney. In spite of the parliamentary influence of friends of South Australia the project was abandoned.

Governor Gipps, though engaged in instructing Captain Hobson as to the occupation of New Zealand, lost no time in making his own views known (19th December, 1840) to Lord John Russell. He transmitted copies of the regulations he had

[1] Petition, 18th June, 1840. The permanent committee in Melbourne included the names of the Rev. J. Clow, Presbyterian; Messrs. C. H. Ebden, A. F. Mollison, and four others. A committee in England was also appointed.

issued. Acting on his Council's advice he reserved from sale all "lands which had been previously advertised at a higher price than £1 per acre," and all unsold lands within five miles of Melbourne, Geelong, or Portland. He pointed out that if he had obeyed Lord J. Russell by selling such lands at £1 an acre, the probable loss would have been £993,490. He forwarded the petition of the Legislative Council, with explanatory comments, and separately transmitted in a comprehensive memorandum his own opinions.

The South Australian system had contained two features—the special survey at a fixed price, and "the disposal of building allotments in the towns by means of a lottery or raffle, the tickets of which were given gratuitously, or next to gratuitously, to the purchasers of a certain number of country acres. The first of these inventions secured very great advantages to early settlers; the second added to the attractions of the scheme some of that excitement which is produced in the human mind by gambling." Both had acted powerfully at South Australia and at Port Nicholson in New Zealand.

Land in Australia was generally fitter for pastoral than agricultural uses. "If the theory by which it is sought to make persons cultivate lands in Australia in the natural order of their advantages be altogether incapable of good, that which would seek to prevent the dispersion of the people is only incapable of mischief because it is utterly impossible to reduce it to practice." As well attempt to confine an Arab within a circle traced on sand as the flocks of Australia within any assignable bounds. Prosperity would be at an end. The time would come when improvement of land would be aimed at, "but it may perhaps be wiser to let this time arrive naturally, as it will, than attempt to accelerate it by any contrivances."

As to the uniform price, its advantages were delusive. An immigrant with a land order might be put into possession of land chosen for him by the Government; "or he may with others draw lots, or throw at dice, for portions to be distributed amongst a given number of persons; or lastly, he may be left to make his own selection. The first mode will assuredly not give him satisfaction; the second it is hoped for the sake of public morality will be never adopted; and consequently the third only remains

to be seriously examined."[1] The third he condemned for reasons stated at length. As to selection without survey the chaotic confusion into which the colony would be thrown was beyond conception. The (licensed occupiers or) squatters of Australia must not be confounded with those bearing the same name in America. Among them were the wealthiest of the land: young men of good family and connections in England, officers of the army and navy, graduates of Oxford and Cambridge, were in no small number amongst them. Selection of unsurveyed lands would leave their homesteads at the mercy of any one who could run faster than they to the land office with a deposit of a few pounds. It was true that squatters knew that they had no secured possession, nor even any right of pre-emption over their lands, and that such lands would be eventually taken from them, or that they would have to pay an advanced price to purchase them; but they had always reckoned on these events, and having time to prepare for them, "they have considered that the Government would continue to act upon the same principle, which has been so long existing, and that the country would be open successively to location, one district after another," and that then they would have equal chance with any other buyer at auction.

Descanting upon the South Australian principle of a fixed price he argued that had Port Phillip been subject to it, "a loss would already have been sustained of £179,000 out of £331,000 which has already been realized." One great advantage of an extensive system of squatting was the rapid increase of stock. The older settlements had, under it, become

"the hive from which swarms of sheep and cattle had been driven to give a value to the lands of Port Phillip and South Australia, which without them would to this day have been an unprofitable wilderness. It is this system which has in reality enabled South Australia to avoid the fate of Swan River; for if South Australia has prospered it is principally, if not solely, because it is nearer to New South Wales. The enterprising colonists who first drove sheep from New South Wales to South Australia, rescued that colony from ruin. It is under

[1] It was adopted in Victoria twenty years afterwards at the instigation of Mr. C. G. Duffy, who saw no wisdom in any other scheme, and no immorality in this. It had however been set in motion by Mr. John Robertson in Sydney previously.

this system, moreover, that New South Wales, after having without the expense of one shilling to the mother country, and without the aid of borrowed money, silently founded a settlement of unexampled prosperity at Port Phillip, is now rendering the same services to Great Britain in securing to her the islands of New Zealand."

Not content with sending the memorandum from which the foregoing are but brief extracts, Gipps in a separate despatch made comparison between the South Australian and New South Wales systems. It was not fair to compare the former with the old free grant system; nor with that which prevailed from 1831 to 1839, of sales at five shillings an acre; the proper comparison was with "that which has been adopted at Port Phillip since 1837."

"Each of these systems is an integral one, and each is new; one was the invention of persons of great ingenuity, whose labours as far as South Australia is concerned, it is by no means my desire to disparage; the other was the result of experience gained in this colony—experience too of the most instructive nature—the experience of our own errors. . . . The sacrifices which it was expedient to make, in the foundation of South Australia, including the sacrifice of all land in the neighbourhood of Adelaide at the utterly inadequate price of £1 per acre, are quite unnecessary in the opening of a district which is already part of a rich and thriving colony. To make such sacrifices would be needlessly to forego—I crave permission even to say, wilfully to cast away—the advantages which naturally belong to a position such as that either of Port Phillip or Moreton Bay. . . . Under the new system at Port Phillip, the survey is made to move forward continuously, and land is only brought into the market at the discretion of the Government. . . . I am aware it has been said that 20*s.* per acre is the sufficient price for land in Australia; and to exact more is needlessly to diminish the amount of the settlers' capital, but I submit that any other price, £5 or 5*s.*, might on equally valid grounds be said to be a sufficient price;[1] and I further submit that 20*s.* is fully proved to be an insufficient price in South Australia, by the simple fact that South Australia is in debt."

In the remainder of his despatch he contended that it would be unwise to have two divisions of a land fund in one colony.

[1] Gibbon Wakefield, as has been shown, never assented to the proposition that £1 was the sufficient price. It was stumbled upon by the Colonial Office in dealing with South Australia.

He did not believe that the older districts of the colony had gained more by the sales of land at Port Phillip than the latter had gained by the influx of capital and population from the older districts. Under the bounty system, the importers of labourers landed them either at Port Phillip or Sydney at their choice, and the Home Government directed the destination of the Government immigrants. "But without descending into any minute calculations of how the advantages derived from the opening of Port Phillip may have been balanced, I respectfully submit upon the broad principles of expediency and justice that all portions alike of the colony should share in the produce of the sale of lands in any part of it." It was so in the United States of America, and manifest injustice would be inflicted on New South Wales if the duty and responsibilities of Government were borne by it, and it should derive no compensation for the withdrawal of population and capital which the opening of a new settlement whether at Moreton Bay or Port Phillip must occasion.

It has been necessary to state the Governor's arguments at some length; for mainly by his means the English Government abandoned the idea of a uniform price. At the same time he warned Lord John Russell of the serious consequences which might accrue from the right to select special surveys of 5120 acres, unless a discretionary power were given to the Governor to allow or to withhold them. Lord John Russell's despatch (31st May, 1840) which had excited the colonists so much, had been peremptory as to Port Phillip; and though, on the boundary question, Gipps stayed his hand and transmitted the remonstrance of the Legislative Council, he proceeded to put in force the uniform price. He had no sooner promulgated the necessary regulations than Mr. Latrobe, the Superintendent at Port Phillip, alarmed at their probable effects, advised that "no land should be sold at the uniform fixed price of £1 per acre within ten miles of either Melbourne or Geelong," but that sale by auction should be adhered to. Gipps agreed with him, but told Lord John Russell "the limit of five miles having been already fixed, I do not feel at liberty without an express order from your Lordship to alter it." The Commissioners issued in England an order (September 1840) for a special survey of 5120 acres to be

selected in Port Phillip, and Mr. Latrobe sought instructions. The holder (Henry Dendy) claimed to select land, "surveyed and unappropriated, or unsurveyed, and as near to the towns of Melbourne, Williams Town, Geelong, &c. &c., as possible." Gipps resolutely decided not to allow Dendy to take lands which, though they might have been surveyed, had never been advertised for sale or declared open to selection:—also that he should not select any land within five miles of Melbourne, Geelong, or Portland, and that if he should select unsurveyed lands they must be taken subject to such regulations as Gipps himself might establish for special surveys. He told Lord John Russell:

"If I am enabled to maintain the ground which I have thus taken up, it does not appear to me that the introduction of special surveys will be attended with any great degree of loss or inconvenience except as they may affect squatters, but if Mr. Dendy be enabled to make good his pretensions, all the lands already reserved, or which it may hereafter be desirable to reserve, will be taken from us at the rate of £1 per acre."

Sir George Gipps' precautions were approved of in England.

Mr. Dendy eventually selected a block as near to Melbourne as was permitted. Had he been able to retain it he would have made (as Sir George Gipps had prophesied in case he were left free to choose) more than £100,000 by his selection. But his lawyers became in the end the holders of the equity of redemption of his mortgaged fee; and he saw the site of the borough of Brighton slip from his hands into theirs. By a despatch dated February, 1841, the regulations under which Dendy and others had obtained special surveys of 5000 acres were rescinded, and no more selections of that kind were allowed. The strong man, though in a distant colony, prevailed over Lord John Russell and the Land and Emigration Commissioners, as to the uniform price, and as to special surveys. He had aimed his objections chiefly at surveys like Dendy's of eight square miles. The Commissioners somewhat inconsequentially assumed that the Governor's objections applied with "much less force to the modified form of special" survey recommended by the South Australian Committee, under which 20,000 acres might be selected.

The replies to Gipps' remonstrances though belonging to another year may be recorded here. "Deeply impressed with the weight due to your own experience and judgment Her Majesty's Government have decided to submit to the Queen the propriety of retracing the steps taken by Her Majesty on this subject." The Royal Instructions of 23rd May, 1840, were in part revoked. Sale of Crown lands by auction was re-established whether within the Port Phillip district or not. Lord John Russell wrote (21st August, 1841):

"The question so much agitated, as to the proper limits of the Southern or Port Phillip district of New South Wales, has thus for the present become of little or no practical importance: that division was made in reference to the supposed necessity of establishing a line of demarcation, beyond which the system of sales by auction should not extend; but as that system will now be restored throughout the whole of New South Wales, it becomes practically unimportant where that line may be drawn; if indeed the question of erecting the Port Phillip district into a separate colony shall be revived, the definition of the limits of it will of course be a matter of serious deliberation, but for the present it is needless for me to enter on it."

A stronger man than Lord John Russell took his place in Downing Street in 1841. On the 1st September Sir Robert Peel became Prime Minister, and Lord Stanley went to the Colonial Office. In October 1841, the new Secretary confided in the Governor's judgment. He gave him discretionary power as to the upset price, and the quantity of land to be sold. In Port Phillip, however, the minimum was to be £1 per acre. In another respect also it appeared that the remonstrances of the Legislative Council had been effectual. The Port Phillip district was to "include the whole of the land bounded by a line drawn from Cape Howe along the south-west boundary of the Monaro district to the head of the Murray, and thence along the Murray to the frontier of South Australia." Thus the Monaro district and the whole territory between the Murray and Murrumbidgee rivers were provisionally incorporated with the Sydney or middle district.

At the period under review the Act (9 Geo. IV. cap. 83) for the Government of New South Wales and Van Diemen's Land had been several times renewed with hardly any modifications

until December 1840,[1] and the question of boundary between the proposed districts of New South Wales remained to be adjusted. It was not until 1842 that the new Act for the Government of New South Wales and Van Diemen's Land (5 and 6 Vict. cap. 76) was passed. The land system of South Australia stood by itself, and was regulated by a special Act until the year 1842.

From Western Australia Governor Hutt wrote lengthy despatches, which were largely commented on by the Land and Emigration Commissioners. Mr. Hutt was a disciple of Gibbon Wakefield, and while deploring the "incalculable evil" of large grants of land, applied his sound sense to practical remedies of the existing troubles.

1. He would call upon absentee grantees to furnish a schedule of improvements effected. He would grant titles in proportion to the improvement on any portion of land, but totally unimproved land he would at once resume.

2. To resident grantees who had effected no improvements he would give a title to one-fourth of the grants, and would resume the remainder.

3. To resident grantees of one large block, who had effected partial improvements, he would give a title for the improved portions, and a further title to one-fourth of the unimproved land, as a reward for their "effort to complete their compact with the Government, and failing only from repeated and disheartening losses.

4. Resident grantees of separated blocks, he would for various reasons place in a similar position to the previous class.

The members of an Agricultural Society and other landholders forwarded through him an earnest memorial praying for consideration, and deprecating the "attacks made upon the colony, and the system on which it was originally founded, by persons who, with little or no knowledge of its nature and resources, have adopted a theory of colonization opposed to that which prevailed in the administration at the period of its foundation." In a very lengthy paper (11th July, 1840) the Land and Emigration Commissioners commented on Hutt's proposals, and made important and imperious suggestions. They would enlarge

[1] In 1839, by 2 and 3 Victoria, c. 70, the local legislature was empowered to provide for administration of justice, constitution of Courts, juries, &c. Otherwise the Act was a mere Continuation Act.

the survey department; fix a uniform price of £1 per acre; impose a tax of 3*d.* per acre on all the assigned or appropriated land of the colony; expend the proceeds on immigration; and, to meet immediate expenses, raise a loan of £12,000. They knew that no land would be bought from the Government at £1, because they had it on record that "in 1839, a large block of the very best land in a favourite district, and held in fee simple, had been bought at less than half-a-crown an acre;" but at all cost they wished to assimilate the land system throughout Australia. A tax of 3*d.* an acre on the land held by the hapless pioneers would amount to ten per cent. on the price reported. But the Commissioners hardly rode their theory; they allowed it to ride them. The gigantic blunder at Swan River had at least done some good by enforcing sounder views on English statesmen. There was no need to change into scorpions the whips with which the poor colonists were scourged already. Even Lord John Russell had misgivings. He gave the Governor permission to deal with the various grantees as he chose (rather than as the Commissioners suggested) after careful consideration. He equivocated with their land-tax by proposing that it should be at the rate of a half-penny per acre. He doubted the propriety of the proposed loan, but would communicate again with Hutt after reference to the Treasury. In November 1840, he condemned the idea of the loan. In the same month he fixed the price of land. After Lord Goderich's regulations it had been in Western Australia (as in New South Wales) five shillings an acre. On the 19th March, 1839, Hutt was instructed to raise it to not less than twelve shillings. On the 23rd November, 1840, he was desired by Lord John Russell to "issue the necessary directions for the sale of all public lands in the colony at a fixed price of £1 per acre."

These arrangements, long since entombed in obsolete orders, may be comparatively uninteresting to a subsequent generation, but they were at the time the all-powerful edicts under which the colonists were permitted to draw their breath. Governor Hutt, utterly opposed to the system on which the colony had been founded, would yet keep faith with the colonists. Not so Lord J. Russell. The immigration fund, which was incidental to the Wakefield system, and obtained before a grantee took

possession of his land, was to be extorted from men notoriously bowed down by misery. It was as if a highwayman finding no money in a man's purse should take blood from his person. But, according to Sydney Smith, if Lord John Russell had taken upon himself the functions of Michael Angelo and failed in them no one could have discovered from his manner that his church had tumbled down. Western Australian sorrows were not likely to disturb him. Thus at the end of 1840 was the small colony harassed on the land question. In New South Wales Gipps was vigorously remonstrating against the clumsy application of new principles to old conditions. In Port Phillip the vaulting ambition of the children of New South Wales was demanding the lopping off of the limbs of their mother. From Van Diemen's Land, where members of the Legislative Council had, in 1833, protested against expending the land fund "out of the colony" (viz. on immigration), there was a desire to migrate to the pastures of Port Phillip, and a consequent paralysis of home industry.

South Australia we have already seen bankrupt. The Colonial Office, only half embracing the Wakefield theory, shrunk from applying its cardinal principle of ascertaining the sufficient price. It is still a moot point whether it could have been found, and whether the system would have worked as its framers intended. With the land question immigration was bound up. The introduction of the bounty system; Bourke's despatches; the immigration report, drawn up by Chief Justice Forbes in 1835; and the proposal to import Hill Coolies from India, have already been touched upon. So pressing was the subject that a Select Committee on Immigration became almost an annual necessity.

In 1838 Bishop Broughton brought up an elaborate report. At least three thousand adult male immigrants were declared to be requisite in the year. To avoid inconvenience from fluctuations in the amount of land sales and inordinate repletion or depletion of the immigration fund, it was suggested that a loan of two millions sterling might be raised. It was strongly urged that the land fund should be rigidly devoted to immigration after paying certain charges which should be as rigidly defined. This was declared to be "the object upon which the first degree

of solicitude is felt and expressed by the public." Like their precursors, the Committee pointed out that the bounty system was more economical than the hiring of vessels by the Government; and, as was due to his character and office, the chairman concluded the report with an earnest and eloquent appeal for the making of provision for religious instruction and communion for the immigrants. "Without this they must gradually sink down to that very low standard of morals, which it was among the chief purposes of bringing them to this country that they might help to elevate." Many witnesses had testified to the pressing want of labour. G. M. Slade, Commissioner for assignment of convicts, stated that between the 1st January, 1837, and the 31st August, 1838, he had assigned 5454 convicts as servants, and that there were then before him from ten to twelve thousand applications with which "from dearth of means" he could not comply.

In 1839 further complications arose. The denunciations of the transportation system in England, especially those of Archbishop Whately, had caused certain magistrates, landholders, and others, to present to Gipps in 1838 a petition, praying for inquiry as to "the actual condition of the colony, and the *working* of the systems of transportation and assignment." The picture drawn in England, and evidence given before the House of Commons, were incorrect. Gipps promised to propose an inquiry, and hinted in his reply that it was "an important question whether the time be not now come when the assignment of male convicts in Sydney and throughout the towns of the colony might be advantageously discontinued." Such a measure would add to the stock of convict labour for predial purposes, and give an impulse to immigration by attracting artisans and a superior class of servants. The petition itself was brought before the Council by Gipps on the 17th July, 1838. In twelve resolutions they recorded their agreement with the memorialists, and their belief that the further progress of the inquiry by the House of Commons would bring the British nation and Parliament to a conviction of the truth. They thought local investigation would be useless, as the great questions affecting the colony might be settled in England before the results of a colonial inquiry could be conveyed thither. They vindicated the morality of the colony

from its aspersers. They declared that well-regulated assignment was at once cheap, effective, and reformatory. They resolved "that in the opinion of this Council the sudden discontinuance of transportation and assignment by depriving the colonists of convict labour must necessarily curtail their means of purchasing Crown lands, and consequently the supply of funds for the purposes of immigration," and that as the produce of assigned convict labour was one of the principal though indirect means of bringing free persons to the colony, the continuance of immigration in any extended form must necessarily depend upon the continuance of assignment of convicts.

Gipps duly forwarded the resolutions, which Lord Glenelg, in compliance with their prayer, promised to lay before Parliament. He declared also to Gipps the entire concurrence of the Government with Gipps' opinion as to discontinuing assignment of male convicts in towns, and added (26th January, 1839) that it was "a step towards the entire discontinuance of assignment throughout the colony at as early a period as practicable." The inquiry of the House of Commons into transportation was concluded in 1838, and Lord Glenelg, in August 1838, informed Gipps that constitutional legislation for the colonies had been postponed in order that the report on transportation might be considered. It was plain that the English Government were intent on discontinuing assignment. The immigration question was therefore vital to the colony. Again (1839) there was a colonial committee on immigration, and again the Bishop was Chairman. The report showed that the extra costliness of ships chartered by Government had absorbed more than £55,000 in excess of the cost of doing the same work under the bounty system; and the rate of mortality amongst the immigrants had been higher in the Government than in the bounty vessels. It recommended the discontinuance of the Government scheme unless it could be shown that the expense could be reduced to a level with the bounty system. The doom of the transportation system was contemplated as approaching, and the Committee recorded "the unanimous persuasion of all persons in the colony that to permit immigration to be suspended or checked would be to seal the death-warrant of colonial prosperity." But the Treasury was straitened, and they were forced to suggest a diminution in

the expenditure, an increase of customs duties, and a loan of £125,000. Revenue could not be derived from Crown lands unless there were a possibility of obtaining labour to make them productive.

Sir George Gipps' financial minute in 1840 showed that the charges for survey and sale in 1839 (£23,000) and for the aborigines (£5800) with the sum expended on immigration (£158,000) had exceeded by £25,000 the amount derived from the sale of Crown lands. At that time drought had paralyzed the energies of a great portion of the colony. Every interest was depressed, and his own efforts, spurred by advice from the English Government, had been sedulously applied to the enforcement of economy. To replenish the Treasury he proposed to enforce payment of arrears of quit-rents. A pastoral community staggering under the effects of drought, of the loss of flocks and herds, and a deficiency of labour which the apprehended withdrawal of assigned servants was expected to intensify, underwent the financial crisis which was inevitable. Prices of live stock, which had been unprecedentedly high, declined with ruinous rapidity. A Committee, of which the Bishop was again chairman, deplored the check which immigration had sustained by means of erroneous aspersions cast upon the colony in England. The distress from want of labour was "almost incredible." Perceiving the weighty objections to importation of Indian Coolies, the Committee was yet constrained to advise that, "under pressure of severe necessity, and every other source having failed, it would be advisable to revoke the prohibition in force against the employment of Coolies."

The appointment of the Land and Emigration Commissioners was hailed as the harbinger of better things; but an adherence to the sale of land by auction was strongly urged, and the introduction of a uniform price was specially deprecated in districts beyond the boundaries of location. The Crown lands in the squatting districts should still be held under licence; and the unfortunate hint was thrown out that "it must be equitable that the occupier, under sanction of the Government, paying a valuable consideration for the permission, should at least have an opportunity of becoming the purchaser, if willing to pay a

higher price than others." Thus was endangered the principle of free pasturage on Crown lands (until they were required for sale), which Wakefield contended for as the complement of his system, and which the reflective writer, Herman Merivale, admitted to be so.[1]

The report of the Committee was selected by the Legislative Council as the basis of sixteen important resolutions, on the 23rd October, 1840. The reasonings of the Committee were adopted, the animadversions in England against the colony were repelled, and as a proof that the working classes were prosperous it was urged that the Savings' Banks deposits had risen in less than five years from £24,500 to £127,000. The maintenance of sale of Crown lands by auction was supported "as the best mode of obtaining the real value at the same time that it exercises a beneficial influence upon the welfare of this community, by enabling the *bonâ fide* settler, occupying lands for pastoral purposes, to ascertain when they are for sale, and gradually to purchase such portions of them as may be essential to his permanent establishment in the colony." Gipps forwarded the resolutions to Lord J. Russell, with "an earnest request that they might be made public," in order as far "as possible to counteract the effect of the misrepresentations respecting New South Wales, which, ever since the publication of the report of the Transportation Committee of the House of Commons, have been so industriously circulated in the United Kingdom." He enclosed a report of a speech made by Bishop Broughton in support especially of the ninth resolution, which dealt with the moral condition of the colony. The Bishop rejoiced at the abolition of transportation to New South Wales, but he repelled the efforts to attach odium to it as a penal colony. He referred to a meeting in Dublin at which promoters of emigration to New Zealand had gone out of their way to denounce New South Wales, and regretted that Dr. Dickinson, chaplain to the Archbishop of Dublin, had proposed an offensive resolution on the subject. There was nothing, he said, "in the conduct or practices of colonial society to justify Dr. Dickinson's statements." That there were vices in the colony could not be denied; but in

[1] 'Colonization and Colonies.' London: 1861. Lecture xvi. Appendix vii.

England, if a man would ransack chronicles and collect instances of crime, he might produce a record which the character of England could not endure. Was this a fair way to try moral character?

The Bishop's speech was printed with the House of Commons' Papers in 1841 and was warmly approved of in the colony. Dr. Lang's newspaper reported it. It contained passages which satisfied him on one special ground which it is here convenient to allude to. He loudly proclaimed the necessity for introducing Protestants in order to counteract the wiles of "Popery." The "Papists" were numerous among the convicts; and they were, he said, straining every nerve to introduce themselves as Government immigrants. His remedy was not the demand for equality of proportions of immigrants from the various parts of the United Kingdom, but a vigorous effort to introduce Scotch Presbyterians. He strove also to stimulate German immigration. The following words were in the Bishop's speech:

"His learned friend had spoken of an anti-Irish feeling here. He was not aware that there was any such feeling. He had never indulged it. . . But he felt it his duty to say that there was a very deeply-seated and wide-spread jealousy concerning the disproportionate introduction of Irish immigrants, which was now in progress. He would fairly admit that if this arose from the greater willingness of the Irish to leave their country, and no covert means were employed to bring them in such excessive numbers, it would be difficult to apply a remedy, and there might be no ground for just complaint. But the impression did exist that means had been taken to cast a damp upon the disposition of the English emigrant, insomuch that few or none were found willing to come, while at the same moment every encouragement was given to the impulse of the Irish. His situation enabled him to know that this persuasion was very extensively prevalent. He received numerous communications drawing his attention to it. He did himself think that there was some ground for the opinion that such influence had been used, and that things were not fairly conducted. And he must say that the objection was not to Irishmen as such, but arose upon religious grounds; those who held with him thinking that if the predominance of the faith adverse to theirs were ever established, as by the description of immigration now going on, it might possibly be, the toleration and freedom of their own religious worship and rights would surely be interrupted. He entirely concurred

in that apprehension, and though he could not offer an objection if the greater influx from Ireland arose in the natural course of things, yet none who thought with him could or would be satisfied, if, as they feared, means were used to check the immigration from England, and at the same time to encourage that from the opposite shore of Ireland."

The late Colonial Secretary, Mr. Macleay, had invited attention to the subject. No violent partisan like Dr. Lang, he had yet written strongly in furnishing information to the Immigration Committee.

"All Irish convicts are without exception sent to this colony, and since Van Diemen's Land was made a separate government, no Irish convicts have been transferred from hence to that island as was before the practice. It is also well known that many of the wives and families of Irish convicts are brought hither at the expense of Government, and that very few of the Irish after they become free have any desire of returning to their own country; whereas a considerable proportion of the English who become free, leave the colony whenever they can procure the means of doing so. The consequence is, that independently of the effect of immigration, the proportion of Irish to the English inhabitants of this hitherto essentially English colony is daily increasing, and the result, unhappily, *is already too visible in all our Courts of Justice.* Now, although the Colonial Government may not be able to remedy this state of things during the continuance of the transportation system, I humbly submit that there can be no necessity for continuing to import Irish paupers at the expense of our colonial funds."

Harping on the strings thus touched by Mr. Macleay and by Bishop Broughton, Dr. Lang found many sympathizers, and in oft-repeated visits to Europe stirred up emigration of the kind he approved of, and won the applause of many colonists, who in other matters did not sympathize with him.

How completely Mr. Macleay was warranted by facts was exhibited in a return appended to a despatch (4th December, 1837), by Sir Richard Bourke to Lord Glenelg. From 1828 to 1837 there had been executed (exclusive of aborigines) 325 criminals, 63 of whom were enumerated as of the "free," and 262 of the "bond" class.

Of the total population of the colony (2nd September, 1836),

54,621 were Protestants, and 21,898 Roman Catholics. Thus the Roman Catholics formed about 40 per cent. of the whole population. Yet of the 63 "free" criminals they had furnished 37, and of the 262 "bond," they had supplied 138, or more than 50 per cent. of the former, and nearly 60 per cent. of the latter class.

The character and position of Governor Gipps had given his opinions weight in Downing Street, which influenced successive Secretaries, and compelled the retractation of Orders in Council issued in the name of the Queen. Sir George Gipps had not been appointed by politicians of Lord Stanley's party, but the latter loyally recognized his ability. In 1842 Lord Stanley introduced a Crown Lands Sale Bill in the House of Commons. With scarcely a dissentient voice in either House it became law. There were to be no gratuitous grants. Land was to be sold by auction, the minimum upset price being one pound per acre. There were to be town lots, suburban lots, and country lots. The upset price of the three classes was to be fixed by the Government. The third clause gave power to make reserves for the benefit of the aborigines, for many enumerated purposes in which the public would have a direct interest, and "for any other purpose of public safety, convenience, health, or enjoyment." Land was to be surveyed and delineated on charts before sale. Land offered at auction and unsold, might be sold by contract at not less than the upset price. Special blocks of twenty thousand acres formed an exception. They might be sold, before survey, in parallelograms, of which no one side was to be "more than twice the length of any other side." Persons paying sums into the Treasury in England were to be entitled to certificates, which were to be available for land purchases in any colony.

The 17th clause empowered the Governor to grant annual licenses for occupation. Subject to a primary charge for costs of survey, unless they should be otherwise provided for in a colony, half of the gross proceeds were to defray immigration to the colony in which the revenue accrued. The term Australian colonies included Van Diemen's Land and New Zealand. The Governor of any colony might create territorial divisions, not exceeding four, for the purposes of the Act, but immigrants

might be "introduced into any part of the entire colony without reference to the territorial division in which proceeds of sales' might accrue. In this last provision the bold hand of Gipps was revealed. He had ever maintained that the indirect exhaustion of the middle district by its colonization and control of Port Phillip made it as imperative, as it was just, that the Crown lands revenue should be administered for the general benefit.

The Wakefield theory of a sufficient price was banished from the direct provisions of the Act; but its advocates secured a loophole for its admittance. The 9th section gave a Governor power to raise the upset price, and the price when once raised could only be reduced by Her Majesty. No word was said about the aboriginal inhabitants in the Act; but the despatch accompanying it desired that a sum not exceeding fifteen per cent. of the gross proceeds should be reserved at Gipps's discretion for their benefit. In transmitting the Act, Lord Stanley expressed his "earnest hope that Gipps's reports on its working would be frequent and copious." Sales of land in the interior were contemplated, for Lord Stanley desired Gipps to retain in his own hands sums wherewith to make bridges, and main roads leading to "lands which it may be in contemplation to bring to market." The fifteen per cent. appropriated from one moiety of the land fund for the natives, was to be under control of the Crown. For roads, bridges, &c. required for opening up new settlements, the Governor would provide in like manner. Of all such expenditure he would furnish accurate accounts to his Legislature. The surplus balance he would pay over to the general account of the colony.

As to the "conveyance of land," to prevent as far as possible any "error on the subject, Her Majesty for the present directed the use of the forms and solemnities hitherto employed in the colony under your government:" and this direction carried with it the conveyance of all above and all below the surface: including the minerals which Lord John Russell had recently wafted from the Crown. The instructions given by Lord Stanley were clear. By the 5th section of the new law, the Governor was authorized and required to convey land with "such forms and solemnities as shall from time to time be prescribed by Her Majesty."

Lord Stanley called special attention to the concession by Her Majesty of her territorial rights in the appropriation by Parliament of a moiety of the land fund to emigration. To every Australian colony he sent a similar despatch.[1] To New Zealand, where the rights of the Maoris to their native land had been guaranteed by treaty, he wrote specially.

It devolved upon Lord Stanley to deal with the constitutions of New South Wales, Van Diemen's Land, and South Australia. An Act for the Government of New South Wales and Van Diemen's Land (5 and 6 Vict. cap. 76) was transmitted with a despatch, dated 5th September, 1842. It had passed both Houses of Parliament without a dissentient voice. The existing Legislature in New South Wales was empowered to arrange the electoral districts, and fix the number of members for each district. The total number was defined as thirty-six, of whom twenty-four were to be elected by the inhabitants, and twelve to be appointed by the Crown. Power was given to the new body to alter the numbers, but the proportions of elected and nominated members were still to be maintained. An elector was to be seized, in his own right, of freehold in land or tenements in the district in which he voted, of the clear unencumbered value of £200, or he was to be a householder occupying a dwelling-house of the clear annual value of £20; and all taxes due were required to be paid to entitle the elector to vote. The Port Phillip district was to return five members, and Melbourne was to have one; and for the purposes of the Act (carrying out the hint in Lord Stanley's despatch of the preceding year), the boundary of the district in the north and north-east was to be "a straight line drawn from Cape Howe to the nearest source of the river Murray, and thence the course of that river to the eastern boundary of the province of South Australia."

The once burning question as to emancipists was set at rest by the sixth clause, which disqualified an attainted or convicted person, unless he had received "a free pardon, or one conditional, on not leaving the colony," or had undergone the sentence adjudged. A property qualification of the value of £2000, or £100 a year, was required in an elected member. The usual

[1] No. 191. 15th September, 1842.

ancillary clauses in such an Act need not be referred to. The existing provision for administration of justice was specially continued till locally changed, and the salaries of the Governor, the Judges, and a few other officers were placed on a civil list, a schedule of which was annexed to the statute. Thirty thousand pounds were similarly provided for public worship. No part of the revenue was to be paid except on warrants under the hand of the Governor. The attempts of Sir George Gipps to establish local taxation for police purposes, and their defeat in the old nominee Council augured ill for the project under a partly elected Legislature. When Wentworth should have his foot planted on the arena of control, how could that be affirmed in the new house which had been denied in the old?

By the 41st clause of the statute "the Governor was empowered to incorporate the inhabitants of every county or of parts of counties, as to him shall seem fit." He was to appoint the first Councillors. After the first creation the Councillors were to be elected—electors and members having, severally, like qualification to those of electors and members of the Legislative Council. On failure to fill a vacancy at any time by election, the Governor was empowered by the forty-sixth clause to "nominate a person duly qualified to fill the vacancy." The *trinoda necessitas* of their Saxon forefathers sank into insignificance before the demands on these new bodies thus created by the fiat of one man. Bridges, roads, public buildings, management of all property within the district, such expenses "connected with the administration of justice and police as shall hereafter be directed to be defrayed by the district, or out of the district funds," establishment and support of schools, levying rates, tolls, &c. &c., were enumerated amongst their powers; and as if these were not large enough, the dire subject of police expenditure was made pregnant with troubles. Even in the old Council protests against throwing the whole burden on a colony which (it was alleged) had lightened England's task in maintaining her criminals, had been rung so often in the ears of Governors, that nothing but their vigour and support out of doors had rescued them from monotony.

The 47th clause enacted that (exclusive of the convict establishment) one-half of the police expenditure should be paid

from the colonial general revenue, the other half by the districts, in such proportion as might be fixed by the Governor and Legislative Council. On the passing of the Act for such purpose, it was to be lawful for the Governor to issue warrants requiring the district treasurers to pay "out of any monies in their hands belonging to the district" the sum assessed. Then followed a blunder into which nothing ought to have led Sir George Gipps or Lord Stanley.

The 49th clause enacted that, if the warrant were not complied with in two months of its receipt in a district,—"the treasurer of the colony or other proper officer appointed by the Governor," could issue a warrant to levy by distress and sale of the goods of the district treasurer, "or of members of the district Council; and if no sufficient distress can thereby be made, then by distress and sale of the goods of any of the inhabitants of the district." The 50th clause placed all police expenditure under "the direction of the Governor." It was no proof of wisdom that such a measure passed "without a dissentient voice."

Municipal institutions must have gradual growth, or they are but excrescences to screen the hand of tyranny which has often abused them. But to create them at such a time and manner, and withal to put the Governor in place of the representative principle, clothed with fullest powers of distress and of expenditure, would have ensured public distrust, even if the charge for police had not already excited ill-will. There was no household in the colony in which politics were discussed at all, where these provisions were not sharply condemned.

And now the vigour and ability of Wentworth asserted superiority and created hope. The emancipist disputes were relegated to oblivion, and it was felt that on all constitutional questions his commanding talents would make him the natural leader of his countrymen. This very question of police was one on which he had enforced attention out of doors. It was accepted as a foregone conclusion that his candidature for the metropolis would be triumphant, and on him were concentred the eyes of those to whom in former times he had been opposed.

Lord Stanley, in transmitting the new statute to Gipps, directed him to "adhere rigidly to the practice of Parliament, which does not permit any question to be put for the insertion

of any new head of expenditure, or for the increase of any single item submitted in the estimates."

The District Councils clauses had been "framed chiefly on the model of those recently adopted in Canada."[1] "The object in the first instance of delegating to the Governor the power of establishing the District Municipal Courts is to secure beyond doubt that the system shall be set on foot. You will observe that when once established, ample powers are given by the 46th clause for securing its continuance."

The despatch was followed two months later by one on arrangements for administration of justice, in which Lord Stanley declared that the colonists must do more for themselves. "The intervention of the executive authority in every branch of public business is to be deprecated on many yet higher grounds than that of expense. Yet on that ground the habit is highly objectionable. It would seem high time that the colonists should assume the management of many affairs which have hitherto devolved on the Government." Certainly the ample powers of the 46th and 50th clauses were grotesquely opposed to Lord Stanley's expressed desire. He had secured the continuance of local taxation for police expenditure which was under the absolute control of the Governor, not by entrusting a locally-elected body with power, but by enabling the Governor to nominate the persons who were to levy the necessary taxes. To the argument that by due elections the inhabitants could oust the nominating privilege, the colonists had the ready reply that they ought also to have control of their police.

In 1840 Sir G. Gipps had told the Secretary of State that the long-pending question of police and gaols was "the never-ceasing cause of nearly all the abuse which is heaped upon Her Majesty's Government and myself; indeed, I have scarcely any difficulty to contend with which may not be traced to this source." He was to find that the District Councils clauses were yet further to exacerbate public feeling; but strong-willed as he was, he was blind to his danger, and as to the last-quoted despatch from Lord Stanley, he expressed his grateful sense of the support afforded at an important juncture by stamping with Lord

[1] But in Canada it was not alleged that the mother-country was indebted to the colony for maintaining convicts.

Stanley's authority the policy for which Gipps had always laboured, and which he was "on the point of carrying into effect" under the District Council clauses of the Act 5 and 6 Vict., No. 76. He was mistaken. Great as was his ability it was not equal to the task, and the unwise efforts he made put off the day for establishing local government in the colony.

The dismemberment of the mother colony was provided for by enabling terms which indicated an intention to form a new colony in the north. Her Majesty, by the 51st section of the Act, was empowered to erect into a separate colony any portion of New South Wales, "Provided always that no part of the territories lying southward of the 26th degree of South Latitude" should be detached. Though Van Diemen's Land was included in the title of the Act, the representative boon it contained was restricted to New South Wales. It would have been strange to confer electoral rights indiscriminately on a population in which Parliamentary returns showed that the convict and freed male population largely exceeded the free.[1]

The objections which repelled the little island from admission to the form of government for which Englishmen are mainly indebted to her greatest king, did not apply to South Australia, but its bankrupt condition required tender treatment, and Lord Stanley stipulated that before granting representative institutions it should be made clear that the colony could pay its own expenses.

The former Acts were swept away. The South Australian Commissioners were gone, but the debts they had contracted remained. A new Act to provide for the better government of South Australia (5 and 6 Vict. cap. 61) was passed on 30th July, 1842. Its provisions were few, and the most important of them,

[1] Returns showed in 1847

	MALES.	FEMALES.
Free born in colony	9138	9217
Free Immigrants	7391	6427
	16,529	15,644 = 32,173

Freed Convicts.		Convicts.	
MALES.	FEMALES.	MALES.	FEMALES.
8832	2687	20,687	3501 = 35,707.

In the male population the preponderance was enormous. The convict element yielded 29,519 persons. The immigrant and native born, only 16,529.

which were of an enabling character, were never used. They will be enumerated hereafter. It will be sufficient to say here that, of three alternative conditions, the one selected was a Legislative Council nominated by the Crown. The liabilities of the colony were largely swept away by the Bill, and when its provisions were before the House of Commons, Joseph Hume, the economic watch-dog, denounced the "shameful waste" of £400,000 of British money. Richard Cobden supported him; but Lord Stanley had a majority of 68 to 15. One hundred and fifty-five thousand pounds were directly granted in aid of the Colonial revenues, and debentures chargeable against those revenues were to be issued in liquidation of further debts. To a short Bill for continuing the existing Act for the government of Western Australia there was no opposition, nor was a word said in debate upon it.

As no great constitutional changes were effected except in New South Wales by the legislation of 1842, it will be well to trace the working of the elective principle introduced there for the first time in Australia. Writs were issued in 1843 for the election of twenty-four members to serve in the Legislative Council. A new pulse beat in the veins of the people. Apprehensions as to the use which might be made of their new privileges were qualified by reflecting that the electors had each a considerable stake in the country. An annual valuation of £20 betokened some substance, industry, or steadiness, on the part of the occupier. But the eagerness, the curiosity, the earnestness, which ran from one end of New South Wales to the other, showed that, for weal or woe, a note had been struck which vibrated through all hearts. That which Wentworth had worked for after a quarter of a century had come upon the land. His name was on every tongue.

At the beginning of the year Gipps had taken the necessary steps to prepare for the coming elections. In touching language he alluded to the position he himself had held as a member of the deliberative body about to pass away, and to the loyal devotion of the members who had laboured in it. The members responded to his feelings.

The required enactments had been passed. The time was one of monetary depression, and men's minds were restless. Failures

of unexampled magnitude alarmed even the sanguine. To prop up the fortunes of speculative men one bank had borrowed from another, and effected its own destruction without saving its clients. General ruin was feared. The Mayor presided at a meeting in May to consider "the alarming state," and "devise measures of immediate relief." Wentworth expounded his views. Expenditure on immigration, sudden cessation of transportation, and exhaustion consequent on wild speculations in land, were the urgent causes of distress. The remedy must be left to the new legislative body. A petition was adopted, praying the Governor to call it together speedily.

On the 1st August, 1843, the new Council met. Wentworth and Bland were the members for Sydney. At the election there had been rioting. Life was lost. But no cabal or resistance could exclude Wentworth or the friend whom he recommended. Wentworth and Bland polled nearly thirteen hundred votes each; Captain O'Connell only seven hundred and fifty. Two others were more ignominiously beaten. Richard Windeyer, a barrister of eminence, of untiring energy, sat for his own county, and was known to be friendly to Wentworth's views. Mr. Charles Cowper, a son of the Rev. W. Cowper, who joined Marsden in 1809 as chaplain, made his appearance for the first time in political life. He had been a clerk in the commissariat office, and General Darling made him Secretary to the Church and School Lands Corporation. On the dissolution of that body he devoted himself to country pursuits. He was known to be industrious, credited with sagacity, and had had no opportunity of showing that in politics he was a chameleon. Terence Aubrey Murray represented the district in which he resided, and his friends entertained hopes that he would take a distinguished part. William Foster, a successful barrister, but not previously known in the political world, was elected for a large county. Many country gentlemen had been returned, and of them it could not be known that they would be active partisans. Mr. Alexander Macleay, the former Colonial Secretary, had been elected, although far gone in years. Major D'Arcy Wentworth, brother of the patriot, represented some county boroughs in a district where his family had property. Dr. Lang, anxious to be in the House, could find no constituency to elect him.

Mentioned in one or two districts, his name was scouted, and he turned to Port Phillip. It was thought that the distance from Sydney might make it difficult to send resident members thence. The elections, judged by results, had yielded a grave body of counsellors, and though there was fiery ability arrayed against the Government it could not be predicated that the bulk of the Council would be hostile.

For the Port Phillip district, of the five elected three were Sydney citizens—Dr. (afterwards Sir Charles) Nicholson, Mr. Thomas Walker, and Dr. Lang. At the head of the poll was Charles Hotson Ebden, who, first a merchant in Sydney, had subsequently engaged in squatting, and in 1836 occupied a station and formed a crossing-place at the Murray river. Having moved onwards he occupied and named Carlsruhe, and having taken up his residence in Melbourne his business capacity soon became known and trusted. He was styled in the newspapers one of the "founders of the colony of Port Phillip." Dr. Lang and his countryman and henchman, Dr. Thomson of Geelong, were the other members; the former having beaten Sir Thomas Mitchell, the Surveyor-General, by eight votes only. All the district candidates declared themselves in favour of financial separation of Port Phillip from New South Wales. Mr. Edward Curr, who had been manager for the Circular Head Company in Van Diemen's Land, was a candidate for Melbourne, and his return was confidently expected. He was called "the father of separation." It seemed that he would be unopposed. But in an evil hour for himself he made some remarks implying that the election of Lang for the province would be so disgraceful that he, Curr, could not be expected to sit for the town in a body of which Lang was a member. Of such dictation there is an inherent jealousy in constituencies.

Mr. Curr was a Roman Catholic, and Lang was on all occasions a deadly enemy to the "Romish priesthood," under whose influence he declared that Curr was acting. Lang had warm friends in Melbourne, and with their aid induced the new mayor, Mr. Condell, a brewer, to oppose Curr. His position as Mayor proved his popularity and justified their choice. He was returned by 295 votes against 261 for Curr.[1]

[1] In his 'History' Lang says, "The Mayor was elected by a large majority."

The friends of the latter were stung to the quick, and many of them being Irish their vexation was characteristically shown. The Riot Act was read, and the mob was partially dispersed, but in the evening a band of them marched through the streets, breaking windows in the houses of Condell's supporters. At one house a determined assault and resistance brought a detachment of the 80th Regiment to the spot, and the police and military cleared the streets, but dangerous gun-shot wounds had been received before relief arrived.

It might reasonably be expected that Lang would be opposed to the Government which he had accused of a "heartless and unprincipled attempt," when it had endeavoured to keep him to his pledges and enforce the terms of the grants it had made to the Australian College, but his main objects were thought to be rather personal than public.[1] The principal journal of the colony summed up his character by saying, "His ruling passion is personal vindictiveness." He himself openly avowed at the time that he required a seat in the Council to serve the interests by which he was connected with the Presbyterian body. A document vouched by himself (in the 'Colonial Observer,' the newspaper he then controlled) said:

"The Government of New South Wales is at present carrying on two actions against the trustees of the Scotch Church (Sydney) for the recovery of the grant of public money made to the Australian College by order of Lord Goderich in the year 1831, and Dr. Lang, it seems, is the responsible head of this institution. Other proceedings are in contemplation in certain other quarters against himself and congregation, which it seems the local government have on public grounds pledged themselves to abet, one effect of which will be to involve Dr. Lang and his congregation in ruinous law expenses. In such circumstances it would appear preposterous to Dr. Lang to affect (priest as he is) anything like squeamishness about entering the Legislative Council

[1] Lang's opponents were able to produce a speech of his in which, while defending himself for the publication of a libel in his newspaper ('Colonist') in 1835, he spoke of the post of an elected member as "a situation to which I trust I shall ever be held ineligible myself as a minister of religion." But he was not abashed like ordinary men. He retorted: "I was afterwards induced to change my opinion on the subject; not from any change of views as to the general principle involved, but simply from the pressure of the necessity in the particular case" (Lang's 'History,' 3rd Edition, vol. i., p. 484).

if a door was opened to him in any quarter; for that Council is the only place where he can defend the important public interests with which he is identified, with effect, and without involving himself and congregation in ruinous costs." [1]

The official members, appointed by the Crown, were the Commander of the Forces; E. Deas Thomson the Colonial Secretary, known and liked by all, but by no means credited for the coolness and capacity which he was about to display in the House; the Colonial Treasurer; the Collector of Customs; the Auditor-General; and the Colonial Engineer. From none of these, except Deas Thomson, could the Governor hope for powerful aid in bringing his proposals before the Council. A few days after the House met, Colonel Barney the Colonial Engineer resigned

[1] It was only by degrees that Lang and his friends ventured to assert that he aspired to a seat on public grounds. In 1847 the process of development was shown in his 'Phillipsland' (London: 1847). "For my own position as the head of an academical institution against which the local government had just instituted a most vexatious proceeding ... it was highly expedient and necessary for me as a means and measure of defence to avail myself of the offer that was thus made to me at so seasonable a conjuncture, of a seat in the Council.... I was also in hopes of being enabled ... to promote the cause of general education.... But I confess my principal object was to prevent the recurrence of a similar calamity to that which had already befallen the colony through the misappropriation of the land revenue and the prodigious influx of Irish popery...." In 1852, in his 'Freedom and Independence for the Golden Lands of Australia' (London: 1852), another change had come over him. By that time his popularity in Sydney was such that some ardent disciples thought he might become the President of an Australian democracy. Accordingly (p. 24) the colony was sole judge of the time to seize "entire freedom and independence"—(p. 50) "let us hear no more of this pitiful, this contemptible charge about our violating or renouncing our allegiance.... Do we owe such allegiance? ... I unhesitatingly answer, No." (p. 63). As to the charge, "that those who desire their freedom and independence are somewhat tinctured with republicanism, I fear it must be admitted." (p. 84.) "Those hereditary bondsmen of the British colonies who would be free and independent must still achieve that freedom and independence in the old regular and accustomed way ... with their sword and with their bow." A few years afterwards Charles G. Duffy, after urging Smith O'Brien to rebel, and evading the consequences of failure migrated to Victoria, and a fellow-feeling brought the two conspirators together. Lang thought no more of the dangers of Irish Popery; and Duffy when in office carried a vote to give a thousand pounds to his Protestant friend, who if he did not love Popery hated the English Crown.

his seat, and Mr. J. H. Plunkett, an upright man with a high sense of honour, and conscientious assiduity, was appointed in his stead. As unofficial members the Governor nominated several who had sat in the defunct Council: but added to them Mr. Edward Hamilton of Cassilis, an English University man with a reputation for talent; and Mr. Hastings Elwin, the chairman of a Loan Company in Sydney. He, as a former Attorney-General in the West Indies, and subsequently employed by the English Government on a Commission, was believed to be sound and practical, while his courtly manners and classic language guaranteed that in any word-fencing his weapons, though keen, would never be coarse. But he was far advanced in years. He was a warm personal friend to Gipps: but, on the whole, the power of the House was not on the Government benches.

A seat had been offered to the Bishop of Australia (Dr. Broughton), who had so long sat in the old Council. He had wished to retire in 1836, but was prevailed upon to remain. Lord Stanley, admitting that he doubted how far it might be well for the colony or for the interests of religion that, in a House partly elective, the Bishop should be a member, left it to the Bishop's discretion to decide the matter. The Bishop adhered to his former opinion, and Gipps was shorn of the ablest debater to whom he could look for help on great points or principles.

Sir G. Gipps had offered a seat to Mr. James Macarthur, who, through one of those blunders which Fouché pronounced to be worse than a crime, had failed to secure a seat by election. But Macarthur declined on the ground that, "after having been rejected by a popular constituency, he did not feel that he could act as a nominee of the Crown, either with advantage to the public, or satisfaction to himself." The circumstances of his rejection excited public feeling throughout the colony, and deserve to be recorded. He himself was a candidate for the county of Cumberland. For the county of Camden in which he resided he was solicited to use influence in procuring the election of Roger Therry (then Attorney-General), the patron of the convict Watt, and the rejected, by the unpaid magistrates of the territory, in the time of Bourke. He took the precaution of ascertaining whether certain persons, one of whom was Mr. Charles Cowper, would become candidates, and finding that they

would not, unwisely consented to support Therry. By so doing he gave offence in many quarters. There was a feeling that Macarthur ought not to have patronized Therry. Charles Cowper was brought forward in opposition, but through the good faith of Macarthur and his friends, who thus undermined their own influence, Therry was successful. The indignation of Cowper and his friends was as great as their surprise. It spread like wildfire in the neighbouring county of Cumberland. Cowper was brought forward at the last moment, though already William Lawson, James Macarthur, G. R. Nichols (a popular man), and another were candidates. Pledges were thrown to the winds. Macarthur's own friends deserted him. Had he not caused the defeat of Cowper? Was not Therry linked with the party which from the days of Macquarie had striven to break down the barriers which kept vice from ascendancy? An army of eager and voluntary canvassers winged their way throughout the county. Circuits of roads were despised, and fences were cleared by young gentlemen on horseback, as if in a steeple-chase.

To the astonishment of all, Cowper was placed at the head of the poll by 502 voices in a constituency where every vote had been pledged to others before he became a candidate. Mr. Lawson was second, with 380 votes. Macarthur third, with 370. Nichols fourth, with 340; and the fifth was far behind. For his good faith in keeping a promise which he ought not to have made, Macarthur was punished by those who broke their own in supporting Cowper, whose change of front had led to the catastrophe. The friends who admired his gallantry could hardly deny the salutary lesson of his defeat. With Therry it was felt he should have had no alliance.

The first question which divided the House gave no indication of the future. Mr. Macleay, almost an octogenarian, was proposed as Speaker. Mr. Hamilton, an unofficial nominee, was made his opponent. It was thought that the Government influence might be thus combined or at least divided against Macleay. In effect, his successor as Colonial Secretary, Deas Thomson, Therry, and a few others voted against him, as did Wentworth, Bland, and Lang, but by 17 votes to 13 he was chosen. Wentworth in the debate lost no time in

denouncing Macleay for his complicity with Governor Darling in persecuting the press, and in other high-handed conduct. The Governor opened the House with an emphatic speech, promising, and hoping for, co-operation in a time of acknowledged difficulty.

"The Council is composed of three elements, or of three different classes of persons—the representatives of the people—the official servants of Her Majesty—and of gentlemen of independence—the unofficial nominees of the Crown. Let it not be said or supposed that these three classes of persons have, or ought to have, separate interests to support—still less that they have opposing interests, or any interest whatever, save that of the public good. Let there be no rivalry between them, save, which shall in courtesy excel the other, and which of them devote itself most heartily to the service of their common country."

Dr. Nicholson and Mr. Murray moved and seconded an address which breathed nothing but concord. It was carried unanimously. In the formal motion that there should be a "humble address" there was a verbal but characteristic alteration which Wentworth and his friends thought becoming. They expunged the word "humble." The needs of the colony were indicated by the Bills which Wentworth promptly brought forward—to prevent waste and destruction of property of solvent debtors under process of law, and to enable proprietors of sheep to give preferable liens on wool-clips and valid securities on cattle, sheep, and horses without delivery to the mortgagee. Under the first he proposed that if a man could show his general solvency, time might be given to him to work his estate; under the second, of which he said he had borrowed the idea from the manner in which sugar-cane crops were pledged in the West Indies, he proposed that the live stock of the colony, then far more valuable or exchangeable than anything else, should be made available in mercantile transactions and procuring credit. Both these measures were passed. He brought in a Bill also to regulate the interest of money, and obtained a call of the House on the day for its second reading; Windeyer demanded a Committee to consider the means of staying the evil consequences of the monetary confusion lately and still prevalent in the colony. He carried also an address for a return of the number of distresses levied by the Government for quit-rents in the

previous year. Nicholson procured a Committee on Immigration, and a supply of labour, and gave notice that he would move that it was desirable to appoint a paid agent in London to advocate with the Ministry, Parliament, press, and public, the interests of the colony, and secure attention to its claims. He also obtained a Committee to inquire into the working of the Insolvent Act. Dr. Lang moved that it was the bounden duty of the Legislature of any Christian country to commence its business with prayer: but his motion was rejected by 19 votes to 11, and his ancillary propositions respecting the appointment of a chaplain fell to the ground. He addressed himself next to the reduction of the electoral franchise, and the position of the Scots Church in Sydney. T. A. Murray obtained a Committee to report upon the recent Imperial Land Sales Statute. When returns were called for, it was by means of an address to the Governor, and not in the absolute tone of the House of Commons. The Governor proposed legislation on several subjects, such as Postage, Light-houses, Merchant Seamen, and Slaughtering of Cattle. Whether he hoped that occupation with details would divert members from the burning questions of the past, cannot be told. But soon the Council table revealed the fact that they were not forgotten. He had appointed District Councils under the provisions of the Constitution Act. The elective Councils were to succeed his nominees. Failing election, the Governor could again nominate. Petitions were poured in, praying for postponement of the operation of the District Councils clauses, or for the repeal of "that part of the Act of Parliament which relates to the establishment of District Councils." Mr. Murray brought forward a motion to the effect that in the distressed state of the colony it was inexpedient to levy on the country districts a moiety of the cost of the police. The first division, which arrayed the bulk of the elected members against the nominees, was one which Wentworth provoked by a motion for a Select Committee to inquire into the riots which had taken place at the Sydney election. He lost it by two votes only, in a house of twenty-eight members. But, as a rule, the country party was with him. Though he carried his Lien on Wool Bill, his Interest Bill was thrown out by 21 votes to 12, several elected members and nearly all the nominees being banded

against him, although his Bill was largely supported out of doors. The terrier of the Opposition, Windeyer, stirred it to condemn as too high the Governor's salary, and to lower that of future Governors; and though his motion was, by leave, amended so as to express the expediency of fixing, by enactment, the salaries of future Governors and of Superintendents at Port Phillip, he obtained leave to bring in a Bill.[1] The Opposition were sharpening their weapons. On the 10th October, Windeyer carried an unanimous address, that "in the present state of the colony it is highly inexpedient, if not impossible, to cast any portion of the police expenditure on the country districts: That this expenditure be defrayed, as hitherto, out of the general revenue." The lion of the party, Wentworth, then carried (as the address to the Governor stated, *nemine contradicente*) a resolution that "the expense attending the confinement of convicts in the various gaols and houses of correction throughout the colony ought not to be borne on the colonial revenue." To the first address Gipps sent a conciliatory reply. He gave the Council credit for no other intention than a desire to relieve the country districts of a burden they were thought unable to bear; and, being of opinion that so soon after their formation the District Councils could not without great difficulty raise the sums required, he was willing "to share with the Legislative Council the responsibility of postponing for a year, a compliance with the requirements of the 47th clause of the Act of Parliament." Wentworth, never a mean opponent, immediately carried an address of "sincere thanks for his Excellency's ready compliance." The question of convict maintenance was neither adjusted nor temporized with. Gipps replied to Wentworth's address:

"As it may have been adopted in the supposition that I have other funds at my command, I deem it right explicitly to inform you that such is not the case, and that I have no funds whatever out of which I can maintain prisoners of any description in the gaols of the colony save such as are placed at my disposal by the Legislative Council."

It was scarcely necessary to add, he thought, that offenders could be committed to no places but the common gaols, and that the Governor had no power to remove them elsewhere before their

[1] Late in the session it was withdrawn.

trials. This reply after some delay was demurred to by a counter-statement that the 47th clause of the Act "distinctly exempts the colonial revenue from all expenses connected with the police of the colony relative to the convict establishment, and impliedly sanctions their payment from the military chest," and the Council therefore adhered to its former resolution. No elected member supported the Government in opposing this resolution; and only two unofficial nominees enlarged the division list in which six officials were banded together. There was a singular difficulty in the Governor's way. The 47th clause, so pregnant with danger, enacted "that one-half of the expense of the police establishment of the colony (exclusive of the convict establishment) shall be defrayed out of the general revenue, &c." The parenthesis was not self-explained, nor had any despatches commented upon it. Gipps could only say that the interpretation put by the Council was hostile to the recent policy of the Home Government as to the convict establishments, and that without instructions informing him of any change in that policy he had "no authority whatever to make any payment from the military chest, on account of the police or gaols of the colony."

The Governor's reasonings were made public by himself in 1844. He laid his own despatch (of October 1843) and Lord Stanley's reply (March 1844) before the Council. Gipps contended that the parenthesis in the 47th section should be construed to relate only to such establishments as those at "Norfolk Island, Cockatoo Island, Hyde Park Barracks, the Female Factory at Paramatta, and the Ironed Gangs," but he nevertheless regretted the insertion of the words, which were "at any rate sufficiently vague to afford ground for re-opening the old contest." He would not admit a colonial gaol to be a convict establishment. Mr. Windeyer had given notice of a Bill to declare Hyde Park Barracks and Cockatoo Island common gaols, and to direct magistrates to commit convicts to those places. Such an indirect way to compel the Government to do what it has directly and repeatedly refused to do, the Governor would meet by withholding assent "from such a Bill, even though it should pass the Council."

Lord Stanley concurred in and adopted Gipps' construction of the clause; gave "most explicit instructions" against drafts

on the military chest for police or gaol expenditure except such as Gipps approved; and added, that if the local legislature should refuse funds, there were but two remedies. One to expedite pardons, absolute or conditional; the other to withdraw the convicts from their present employers to labour in some of the convict establishments, relieving those establishments by transferring any redundancy to Van Diemen's Land. He hoped the Legislature would not make such measures necessary. "The project of avoiding the dilemma by throwing this charge on the British Treasury is one to which you will make the most uncompromising resistance."

These brave words did not terminate the struggle. The Governor was now confronted in the Council by the united forces of the colony on a question upon which his own nominees, headed by James Macarthur, had out-voted him in a nominee house. His message was discussed at some length in the Council, but no resolution was based upon it, and the Attorney-General admitted that he had no expectation that the Council would retreat from its position. Nor could it be expected to do so. In the end the Imperial Government failed to untie the knot, and resorted to legislation to cut it. By the 7 and 8 Vict. cap. 74 (6th August, 1844) they declared that the phrase in the Constitution Act (exclusive of convict establishments) "should mean only places maintained for convicts actually undergoing their sentences of transportation from the United Kingdom." Such a retrospective enactment could not, however, annihilate the past, and Gipps had been placed in a very false position by other men's blunders.

The expenses of administration of justice afforded another ground of contention. The Governor had submitted his budget by message on the 23rd August; and various resolutions adopted in Committee had been reported to and adopted by the Council, and in some instances communicated to the Governor. Many were uncommunicated. On the 19th October he sent to the House further observations on judicial estimates. He learned that the Council had affirmed—"That it is the opinion of this Committee that if it be called upon to vote more for any particular service than is appropriated thereto in the schedules to the Act 5 and 6 Vict. cap. 76, it has and ought to have power to fix

the amount to be appropriated to every detail of such service, except such as may be specifically provided for in such schedule." He unfeignedly regretted that with this resolution he could not fully concur. Were he to do so he would acknowledge a right to reduce the salaries of the law officers—"a right which I cannot acknowledge as long as I consider the faith of Her Majesty's Government to be pledged to those salaries, and the means of maintaining that faith to have been placed within Her Majesty's power by the Parliament of Great Britain." He carefully explained his own views as to the sum he had asked for, in excess of the amount provided by the Civil List. Unwisely he went further, and became didactic. He analyzed the position of an Opposition in New South Wales as compared with an Opposition party in England. In the latter place it was not desired to reduce the emoluments of office, but to grasp them. In the former, having no prospect of office an Opposition is not restrained from rendering Government inefficient, or reducing emoluments below a rate for which they might be "willing themselves to devote their time and talents to the service of the public." "Upon every principle of right reason and sound policy it seems to me that the salaries of the principal officers should be guaranteed to them by the Head of the Empire."

Wentworth grimly gave notice that the message be considered. A classic Roman head, a massive form, would have made him noticeable by any one who scanned him. A slouching gait, and a cast in the eye, still further attracted attention though not admiration. But he played the game fairly, and might be forgiven if gleams of satisfaction coruscated from his eyes in divers directions when his foe so palpably committed himself. Accordingly, on a subsequent day, he moved resolutions expressing regret that "the Governor should have been led into allusions to matters not officially communicated to his Excellency, and which in the opinion of this Council are at once irregular and inconsistent with that perfect freedom of debate which is the inherent privilege of every branch of a free Legislature." The unconstitutional tendency of such a course he was persuaded had escaped his Excellency's attention. As to his Excellency's arguments about the Opposition, he moved, that the Council cannot agree with any of these propositions, or in the inferences

sought to be deduced from them, as consonant to right reason and sound policy, or that such propositions are to be taken, any more than despatches of which this Council knows nothing, as arguments, which ought, in any wise, to alter the construction which this Council, in the resolution referred to in the said message, has deliberately, and also in strict accordance both with the letter and spirit of his Excellency's prior message[1] to this Council, put upon the Act of the Imperial Parliament. The message, he declared, had been sent for the purpose of intimidation, and as a precursor to an attempt to ride rough-shod over the Council in the ensuing session. Windeyer said it was the first infringement of freedom of debate.

There was consternation in the Government camp. None could doubt that Wentworth was on most points right. But to vote that he was so,—to enable him to overthrow the Governor so personally and distinctly,—was not desired by many.

Every friend of the high functionaries interested was determined to do nothing to compromise their position, although the Governor's prior message might be held to submit them to the discretion of the Council. Every friend of the Governor resolved that he should not be condemned for unwitting disrespect for Parliamentary usage. Every nominee in the former Council felt that it was hard that on the transition, from a condition in which the Governor was present, to one in which he was absent, he should be transfixed so ruthlessly for inadvertence. Mr. Elwin, Roger Therry, and Mr. Foster, defended the Governor (in an adjourned debate), denying that he had encroached on the freedom of debate, and deprecating the violence of the Opposition. By 14 to 12 the putting of the question was rejected, but only three elected members voted with the Government,—Foster, a practising lawyer not devoted to politics, Panton, and the supple Therry. Gipps felt that he must acquire debating power

[1] The prior message pointing out that an excess had to be provided for in Schedules A and C, added that "the Council having to make good an indispensable supplement," had "for all practical purposes as much control over the expenditure on account of the whole of the services enumerated in those schedules, as it would have had though those schedules had not formed part of the Act." Gipps explained that when he wrote thus it was not within his "contemplation that any desire would exist to reduce the salaries of officers holding their appointments from Her Majesty."

for his cause. Deas Thomson, the Colonial Secretary, was winning golden opinions by tact and persuasive speech, but the weapons of several of the Opposition were sharper than his. The hour seemed to be come, and the man required.

Recently Mr. Robert Lowe had arrived in the colony. Distinguished in the classes at Oxford, a fellow of Magdalen in 1835, a private tutor and examiner, he was called to the bar in 1842. Gipps, able himself, delighted in the companionship of able men. Mr. Lowe shared not only the ordinary hospitality dispensed to travellers, but became a guest residing at the Governor's house, and making his fireside brighter by his wit. Polished by daily contact with ancient and modern learning for a longer period than falls to the lot of most men; in vigour of mind, and prime, he was welcomed by all who admired wit or learning. He was not a colonist it was true. He might abandon the colony as suddenly as he had appeared in it. But he seemed devoted to Gipps and his cause, and Gipps offered him a seat in the Council. Old Mr. Jones (a member of the former nominee House) resigned his seat; and, a week after the crucial division last recorded, Mr. Lowe was sworn in as a non-elective member, in his room, on the 8th November, 1843. With his ready rhetoric, pungent epithets, and sarcasm, it was felt that the Opposition would have to deal warily. Throughout the session, which lasted to the 28th December, he assiduously supported the Government, but though his oratory was universally admired all Wentworth's friends took heart of grace on finding that, whether from superior earnestness or the surly dignity of conscious strength, Wentworth was still allowed to be the greatest man in the House, and on all great occasions its greatest orator. Before the end of the session he carried a resolution, that "the excess in any one of the schedules on the Civil List should be applied to make good the deficiencies in any other of the schedules before any application should in future be made to the Council for any sum in aid of the deficient schedule," and that the Governor be requested to transmit the resolution for the "gracious consideration of Her Majesty." An attempt to shelve the motion by means of the previous question failed.[1]

In the following year Gipps was recommended to give

[1] 20th December, 1843.

way upon the point. Her Majesty would not be advised (Lord Stanley wrote) to divest herself of the discretionary authority confided by the Act of Parliament, and the Queen would therefore "retain the exercise of the right" to appropriate savings, "but I have to signify to you Her Majesty's pleasure, that in the absence of any commands from Her Majesty to the contrary, the course recommended by the Council should be pursued," subject to changes which might afterwards be sanctioned.

Gipps did not receive this wavering instruction until the close of the session of 1844. He communicated it to the Legislative Council in 1845, without remark. That the "exercise of a right" was to be retained by the Crown, and that Gipps was to abandon it at once, were positions which he could not satisfactorily discuss. His own position had been treated with scant consideration. Had he been left at his own discretion to make a concession, the object would have been decorously attained which was aimed at by the Colonial Office. The Council having, in August 1845, asked Gipps to defray expenses which they alleged were authorized by Lord Stanley's "directions," Gipps told them:

"It is unquestionably my duty to obey all lawful commands which I receive from Her Majesty through the Secretary of State; and it is most sincerely my desire to comply with the wishes of the Council as far as my duty will permit me to do so; but in the position in which I am now placed, I feel compelled to say, with equal respect to the Council and the Secretary of State, that no consideration whatsoever can induce me, knowingly, to do an act which I believe to be unlawful.[1]

The Judicial Estimates Message, which had compelled Gipps to go into the by-ways to secure debating talent in the Council, was commented on at length by Gipps in his despatches to England. It was because the Colonial Secretary and other Government officers were "taunted with holding different opinions from those" of Gipps, and because it was urged that "if he had in reality changed his mind he ought himself to communicate his altered views," that he had sent his didactic and offensive message to the Council (in October), in which he had, besides

[1] New South Wales, Legislative Council Papers, p. 297. 1845.

discussing the nature of an Opposition, thus referred to the Civil List:

"Upon every principle of right reason and sound policy, it seems to me that the salaries of the principal officers of a colonial government should be guaranteed to them by the Head of the Empire, and I feel persuaded that the Schedules A and B appended to the Act 5 and 6 Victoria were intended by Parliament to afford to Her Majesty the means of so guaranteeing them."

Lord Stanley approved of Gipps' determination, but did "not pause to inquire how far" it was well advised to enter into the hypothetical reasonings of the "prior message" pounced upon by the Council.

"Your subsequent message of the 19th October, 1843, claims for the Crown the right with which beyond all controversy it was the design of Parliament that Her Majesty should be invested. That right you will firmly but respectfully maintain and carry into execution. . . It will be your duty, as I doubt not it will be your wish, to adhere strictly to the terms and the spirit of the Act of Parliament, under the authority of which the Legislative Council are convened, neither surrendering anything which the provisions of that statute have reserved to Her Majesty, nor insisting on Her Majesty's constitutional authority in such a manner as to afford any just cause of dissatisfaction to the Local Legislature."

Mr. T. A. Murray's Committee reported that the working of the recent Land Sales Act must be injurious to the colony, and the Council, on his motion, adopted resolutions condemning the Act, denouncing so high a minimum price as twenty shillings an acre,—or any uniform minimum price for lands of divers qualities,—and advocating the promotion of immigration by remissions at land sales in proportion to the costs of settlers arriving or labourers introduced.

Windeyer's Committee on Monetary Confusion sat for many weeks; examined witnesses, bankers, merchants, and others, and reported in favour of "the intervention of the credit of the colony" to avert ruin by the adoption of a modification of the Prussian *Pfandbriefe* system. A Bill founded on the report was introduced under the name of a "Monetary Confidence" Bill, and was hotly debated. An irregular amendment descant-

ing upon the miseries of the time as "increasing with frightful rapidity, and likely to involve in ruin the whole community," and urging that Exchequer Bills or Government Debentures were the only remedy, and that the Governor should be requested to hold a conference with members of the Council, was moved by Mr. Charles Cowper, but was lost by 7 against 15 votes. Windeyer carried the second reading of his Bill by 14 votes against 8, Mr. Lowe vainly contending against him.

It was then discovered that a Bill involving the public revenue should (by the 34th sec. of the Constitution Act) have been recommended by the Governor, and an address to the Governor was moved praying him to remove "the legal incompetency" of the Council as regarded the Bill, or to cause some measure to be introduced of equivalent tendency.

The supporters of the address were defeated, some friends being absent, and the Collector of Customs, and Dr. Lang, who had voted with them formerly, deserting them in their weakness. Mr. Lowe still worked hard for the Governor. The third reading was only carried by 11 votes to 9, Dr. Lang returning to his allegiance, and only two elected members, of whom Therry was one, swelling the phalanx of nominees who opposed the Bill. As was expected, Gipps announced that he withheld the Royal Assent.

A Tariff Bill which the Government introduced met an almost similar fate. The Council amended it. The Governor (under sec. 30 of the Constitution Act) sent down an amended Schedule of Duties; the Council declined to amend the Bill the day before the prorogation, and the Governor reserved the Bill for the signification of Her Majesty's pleasure, promising to submit with it the "reasons why he humbly recommended that it should *not*[1] pass into law."

This minute was reported by the Speaker to the thwarted House immediately before the Governor in person prorogued the Council on the 28th December. He declared his sympathy with their efforts to restore confidence, but regretted that he was forced to the conclusion that the colony could not by "any direct legislative enactment be relieved from the depression" under which it laboured, and that only by measures of a general

[1] The word "not" appears in italics in the proceedings of the Council.

character individuals could be assisted "in the recovery of their affairs." This opinion was confuted by the results of Wentworth's Lien on Wool and Live Stock Bill, which was universally admitted to have arrested the downfall of the bulk of the settlers by enabling them to derive from credit, the life-blood of commerce, that assistance which, without the Bill, was denied to the chattels which formed at the time the genuine resources of the colony.

It has been necessary to narrate at some length the proceedings of the first session in order to show how the new relations between the Governor and the elected members grew or were shaped by the leaders of the people. Mr. Macleay won golden opinions by his conduct in the chair. Mr. Elwin, as Chairman of Committees, and in framing the Standing Orders, did the same. When he found the claims upon his time prevented his retention of the chairmanship, he resigned it, having some weeks previously received the thanks of the House for "his efficient and gratuitous discharge of the duties."

The private business was not very important. Dr. Lang's friends and congregation petitioned for aid to relieve their church from debt. As he had ostentatiously abandoned State aid, he affected to stand aside from the petitioners, and merely gave evidence in support of their claims when summoned. His henchman, Dr. Thomson, a Port Phillip member, was chairman of a Committee which recommended that a grant of £1480 should be asked for; making it one of their arguments that their pastor, Lang, had renounced all salary from the 1st April, 1842. In the session of 1844, Mr. Cowper declared that the proceedings of their Committee were a disgrace to the House, and was cheered while doing so.

Another Port Philip member moved an address to the Governor, founded on the report, but Gipps regretted that he could not comply; pointing out that a "remission of a debt of £520 due from the trustees to the Government was considered, so lately as in 1841, a final settlement of the claims of the church on the Government." It soon appeared that Lang's position was more dependent upon the expected grant than the House had been led to believe.

Money, though asked for in the name of the church, was to have found its way to him. He had never accumulated

riches. Avaricious of other men's goods, he was, like a disturber of old, spendthrift of his own, and he owed money. A few days after the Governor's message was delivered, Dr. Lang published a lengthy appeal "to the constituency of New South Wales." He assailed Gipps as not having "yet learned the proprieties of his place." If the grant had been made "the trustees of the Scots church . . would have been in a position to repay me at least a considerable portion of the sums I had expended on their behalf." But as his Excellency has "frustrated these expectations . . I shall be under the necessity of disposing of my remaining property; and as that property, though considerably encumbered already, still constitutes a sufficient qualification for a member of Council, I shall also be under the necessity of resigning my seat in Council from the loss of that qualification." He was wise in his generation. He had supported and fawned upon Wentworth, and the Opposition were unwilling to risk the loss of a vote.

Of the five Port Phillip District members, Lang had been lowest on the poll, and it was not expected that in a single election the seat could be secured for any one holding his opinions. Meetings were held by friends of the Opposition in various places. Money was subscribed to relieve Lang. Wentworth gave £20, Bland gave £10, and promised more if needed. At some of the meetings Lang was commended for his efforts to extend the franchise, and he obtained a fulcrum for future popularity in the districts of New South Wales. He was quick to use it. Though he had so recently resigned his own dole from the Treasury, he gave notice of resolutions denouncing State aid to religion under the circumstances of the colony as "a great and intolerable grievance." He described the nominated portion of the House as "contrary to the Bill of Rights," and the "popular rights in this territory,"—taxation being the "inherent, incommunicable, untransferable, and exclusive right of the people and their representatives." The Civil List he called "an infringement of the constitutional privileges of the free inhabitants of the colony," and "likely to engender the worst feelings between the Government and the people." He did not move his resolutions, but they served his purpose. He made a name for himself in the mouths of all who were greedy for new things.

But he was capable only of destruction or assault. For all practical purposes he had been a failure in the House.

Men saw that Wentworth's propositions tended to direct results, and that Lang's efforts ended in vituperation. He obtained a Committee on postal improvement, however, and he introduced a bill to enable the Corporations of Sydney and Melbourne to establish and support schools. It was ordered to be read a second time "this day six months," his solitary supporter being Roger Therry. He obtained a Committee on a petition from "distressed mechanics and labourers," and the Government procured a vote of £500 to assist labourers to go to the country districts, where labour was more required and less abundant.

Windeyer, who represented a county on the Hunter river, where much tobacco was grown, carried an address, praying that steps might be taken to reduce the duty on that article in Van Diemen's Land. Sir G. Gipps communicated with Sir Eardley Wilmot, who, "with every desire to preserve friendly relations, could not see that it was practicable to reduce the duty," with a due regard to the discipline of the convicts, and the revenue. Windeyer then carried an address praying "his Excellency to move Her Majesty to disallow the Acts of the Government of Van Diemen's Land imposing duties on tobacco and coal imported into that colony from this." In the exercise of newly-found strength, he forgot that the other colony was entitled to an opinion in the matter. Gipps had himself been directed (28th June, 1843) to withhold his assent from any customs' duties of a discriminating character as regarded the place of shipment.

The labours of Dr. Nicholson's Committee on the overland route to Port Essington, which sat in the session of 1843, have been elsewhere detailed.

Voluminous papers concerning a defaulting Sheriff who, overwhelmed with horror at finding his accounts inextricably involved, after a long course of carelessness, was found to have "destroyed himself in a fit of temporary insanity"—were laid before the Council. At his death about £950 were due by him to the Government for fees received, and were recovered from his estate; but various solicitors of the Court prayed that their claims also might be recognized as in some sort public. They had paid monies into the Sheriff's office, and were now told

that their claims could not be ranked as private debts against the estate of the deceased, neither could the Government assume responsibility for an officer who had been beyond their control in the exercise of his functions; the Sheriff being an officer of the Supreme Court, and bound to give security to that tribunal. Gipps would admit no such responsibility. Neither did the Judges. They could exercise "a species of visitatorial power," but nothing more. The deceased had, like many other officials, engaged in squatting pursuits; the pressure of the times had been hard upon him, as upon others. His death had occurred in 1841. The property he had left was inadequate to pay his private creditors. The whole transaction would perhaps hardly deserve to be recorded but for the gleam of light thrown upon it by the conduct of his son.

In 1846, Thomas Hyacinth Macquoid petitioned the Legislative Council. He had been toiling to pay, and had paid portions of, his father's debts. He hoped to pay them all. There were many who had made no claims on the estate, but they also were included in his intentions. His petition was that the claims of the "suitors or their attornies" (which neither Government nor Court would acknowledge), might be paid, security for repayment being taken from the petitioner.

"Your petitioner would most gladly, if he possessed the means, pay in the first instance the suitors, because, though their claims, in common with the late Sheriff's other debts, had their origin in the exaggerated estimate of the value of sheep and land, which then prevailed throughout the colony, and to which petitioner's father and many others became victims, yet your petitioner is sensible that they are alike discreditable to his memory, and to the Government under which he held office."

Other creditors declared their willingness to "postpone their claims in order that Thomas H. Macquoid may be in a position to grant security to the Government for an advance to enable him to pay off the claims of the suitors in the Supreme Court upon the late Sheriff." A Select Committee reported "that the Crown should not be less willing than private claimants to aid in the accomplishment of a design suggested by feelings so honourable." Sir Charles Fitz Roy "with much pleasure intimated his willingness to co-operate," and placed the

required sum upon the estimates. With modest bearing, but unswerving resolution, Hyacinth Macquoid accomplished his cherished purpose, and many an eye was wet when, in 1857, he was wrecked at the South Head, when returning from England to Sydney in the ship 'Dunbar.'

Papers relating to the insolvency and removal from office of a late Registrar of the Supreme Court, were laid before the Council. The same disastrous year, 1841, had brought him down, and large sums which had been in his hands as administrator of the estates of deceased persons, were lost. He could not explain otherwise than by pleading that "sudden and awful depreciation of property had set all calculations and all confidence at defiance." Under rules of Court he was bound to pay moneys of intestate estates into the savings' bank for investment, and this he had not done. More than nine thousand pounds were missing. He revealed his position to the Judges, and they broke it to the Governor in December 1841. They suggested that security should be demanded from him rather than that in a time of commercial crisis he should be exposed to ruin. He was a holder of large possessions. He had no security to offer when called upon. There was property valued at £24,700, he said, but it was mortgaged already for £11,000. This he was willing to subject by powers of sale at stated periods for the object in question, "should their Honours the Judges be of opinion that he could do so without violating the principles of legal and moral justice." He did "not contemplate insolvency, although circumstances might render it in a legal sense compulsory." His "private claims were numerous and heavy, some of them presenting peculiar claims on his sense of justice." He then tendered his resignation, but was told that the Governor "could not consistently with his duty accept it." Gipps proposed to suspend him. The Judges thought the effect of suspension would be to release the defaulter from any control which by law the Supreme Court had over him. The Chief Justice, Dowling, with singular unconsciousness as to the appearance of such a recommendation, suggested that he should be allowed to retain office till Her Majesty's pleasure might be known, and that Gipps should forbear making any representation to the Secretary of State, in order that, if within

a reasonable time the defaulter should find security, the fact of his having done so might be weighed with "the whole circumstances in which he is unhappily placed." Gipps much doubted the propriety of such a procedure, and said so. The Judges thereupon were impelled to take more summary measures. By a rule of Court the defaulter was ordered to pay over all moneys in his hands, and on his failing to do so, writs of *fi. fa.* were at once obtained against his estate and effects, which were ample to meet the claims of the intestate estates, unless existing encumbrances should be shown which would leave no balance for the purpose. Gipps contended in his despatches that the Government was not responsible for the laches of the registrar over whom the Judges had control.

In a later session the Governor's nominee of 1843, Mr. Lowe, stirred the matter offensively against the Governor, though the part that Gipps had played was one calculated to protect the public.

A short session, opened in March 1844, gave rise to no disputes. A decision in the Supreme Court had thrown doubt on the powers of certain magistrates. An Indemnity Bill, as well as two other amending bills, were passed, and the Council was adjourned in four days. The serious work of the year began on the 28th May, when the Council were again summoned; but before they were assembled the Governor had made an administrative blunder from which he never recovered. He knew that the bulk of the producing wealth of the colony was to be found on the pastures of the waste lands of the Crown. He knew that much of the intelligence of the community was engaged in that production. Many of those who had never left Sydney, and knew little of country affairs, were yet interested as proprietors, or were intimate friends of proprietors, of stock depastured in the interior. A moment's reflection ought to have taught him that such an interest should be touched with circumspection, and that any errors in handling it would arouse unanimous resistance of the elected members of the Legislative Council. They knew, if he did not, that the life-blood of the colony would be poisoned if that interest should be injured. On this occasion he was not circumspect nor even prudent, though as usual he was vigorous. The casual and territorial revenue had been for years a subject of discussion and dispute. Wentworth had, out of

doors, maintained that it should be controlled in the colony. The great meeting of 1834 had dealt mainly with the droits of the Crown. The protests of Blaxland in the Council had been as regular as the sessions. Till 1832, in the colonial estimates, the income from Crown lands had been included in the ways and means for defraying the year's expenditure. But after the receipt of a despatch from Lord Goderich (4th March, 1832) that practice ceased under his special command. The Crown revenue receipts and expenditure were no longer submitted to the Legislative Council, although immigration was defrayed from the fund. Bourke did not conceal his sympathy with Wentworth, in a despatch of 1834, to Lord Stanley. Lord Glenelg had replied by referring to a despatch from Mr. Spring Rice, showing that

"His Majesty's Government have acceded to the principle of the local treasuries of the respective Australian colonies receiving any surplus of the land revenue, and of the other casual revenues of the Crown, beyond the sums appropriated to the purposes of emigration, &c.;[1] and in the spirit of that arrangement you will consider yourself authorized to place in the Colonial Treasury whatever revenue of the Crown may remain unappropriated at the expiration of every year, after paying the expenses incurred on account of emigration, and after defraying any other charges which His Majesty's Government should think proper to direct should be borne on that revenue. At the same time it cannot be too distinctly understood that the directions just given are not to be taken as divesting the Government of the full and uncontrolled power of applying the Crown revenues, in part or in whole, without the consent or intervention of the Legislature.

Sir George Arthur in Van Diemen's Land took care to make it "distinctly understood" by his Legislative Council. Bourke was less cautious, and heaped innumerable troubles on the head of his successor. Wentworth in Council declared that Bourke had made a "compact" with the late Legislative Council, and that all territorial and casual revenues not appropriated by the

[1] The Select Committee of 1844 charged Lord Glenelg with interpolating "et cetera," and thus perverting the real text. The terms used were so vehement that a memorial was presented to Gipps, signed by P. P. King, Elwin, James Macarthur, S. K. Salting, and others, regretting the use of language so offensive in a public document, and entirely disclaiming on their part both the language and the sentiments. The press jeered the memorialists.

Land Sales Act should be placed at the disposal of the Legislative Council. In 1844 he moved that the estimates for 1845 be not considered till the compact was carried out. The majority shrunk from the catastrophe which must have ensued, but supported Wentworth in maintaining the existence of the compact. Gipps in an elaborate financial minute in 1844 cited the original despatches; but the public sympathy would not look at the matter in a "dry light," and the aspect given to the case by the carelessness of Bourke was preferred. Wentworth was able to quote a message of Bourke's (in 1835) containing the words, "the revenue of the Crown lands being now left to the appropriation of the Council,"—and—"the income of the Crown lands now placed by His Majesty under the control of the Council."

But however distinctly understood it ought to have been that the revenue was disposable by the Crown, the raising of that revenue affected deeply the condition of the colonists, and this should have made Gipps wary in his dealings with them. He was unwary. He seemed arbitrary.

The Act under which the assessment on stock depasturing on Crown lands was levied ought to have guarded him from rashness, for it was a recognition of the oneness of the occupants of Crown lands with their brother colonists. Two of the Judges (Burton and Willis) had in 1838 joined in a remonstrance impugning the right of the Crown to the territorial revenue, such revenue being a tax on the inhabitants; and Gipps had then written that the public mind was "intensely directed to the way in which the Crown revenue is to be appropriated." The scruples of the Judges had been set aside in England, and a power was asserted to "grant a license to depasture over any part of the Crown lands on such terms and conditions as may seem reasonable or may be agreed to."

Lord John Russell had, in unhappy ignorance, suggested in 1841, that both "licenses and head money on stock" might be raised. That a drought had scourged the interior; that a meagre return for their labour was then the lot of the most fortunate; and that many squatters lost their "runs" through inability to purchase food for their shepherds and stockmen, were trifles unweighed by Lord John. "It is difficult for me at this distance," he wrote, "to fix the amount to which it might

be increased, but it appears to me that it might be raised to five or six times the present amount." That such an augmentation could be made without a contest by the sole act of the Governor in a colony partly enjoying representative institutions, and where the bulk of the live stock was depastured on Crown lands, could not have been expected by any one, unless he thought the inhabitants like the Notte of Michael Angelo:

"Grato m' è 'l sonno, e piu d'esser di sasso."

Sir George Gipps was to waken them to his cost.

While Mr. Murray's resolutions on the land question were before the Legislative Council in December 1843, Gipps sent circulars to the Commissioners of Crown Lands, gentlemen residing in the squatting districts, who corresponded with the Government, decided disputes as to boundaries between squatters, received returns of their runs and stock, and acted as resident magistrates in extensive areas. Neither by training nor by native talent could they as a body be looked to for advice in "unfolding the properties of Government." Yet to them did Gipps apply. They were to consider maturely and report, as to assimilating licenses to leases, the quantity of land which would suffice for 500 head of cattle or 5000 sheep; and the limitation of runs for each of which a separate license was to be taken; the encouragement of improvement and cultivation by giving an occupier "a kind of right to purchase a portion of his run, or otherwise to obtain secure possession for a term of years after occupation as tenant at will for a fixed term—say five or seven years"—and the prevention of irregular transfers or sales (occurring at the time) "without the sanction or even the knowledge of the Government."

Fit as these problems were for the Legislative Council to deal with, they were entrusted to others with whose jejune reports these pages need not be encumbered. Had they been worthy State papers they must have fallen harmless to the ground. The community had begun to repose its trust elsewhere than in Government officials, and scouted the idea that the opinions of a few gentlemen, some of whom were of mediocre capacity, should influence the future of the colony. In singular congruity with the rashness of the whole proceeding, Gipps did not wait

for all the replies before issuing new regulations on the 2nd April, 1844. The most thoughtful reply was dated at Darling Downs on the 30th March, and Gipps saw too late, if he saw at all, Mr. Rolleston's warning that imprudent interference "would raise a universal outcry in the colony, and create a feeling, however unwarranted, of distrust in the Government."

Superficial observers have said that it is unaccountable that regulations so unimportant should have evoked such public hostility as they encountered. The sting was more in the underlying principle than in the amount of the additional burdens proposed. Those who had never before meddled with politics meddled now. All classes seemed to combine. Dr. Lang added his invective to the general chorus, and declared that common cause should be made by all with the squatters to resist unconstitutional oppression. The Governor was almost unable to comprehend the universal uprising. He had no evil intention, and the regulations in themselves were not oppressive. The public, however, saw that if mere will could make them, it could make others more stringent, and over the wide extent of the colony the prerogative of the Governor would be potent as that claimed in ancient days in England and resisted to the death.

The annual license held by a squatter having been originally granted rather as a proof that he was reputable enough to be allowed to reside beyond the "boundaries of location," than as rent, was not demanded more than once from a man, and many squatters held many separate runs. Proportionate contributions according to the area occupied or the stock depastured would have been readily consented to, had the demand been made through an Act of the Legislature. At the imperious behest of one man they were felt to be dangerous. The ship-money refused by Hampden was the watchword of Wentworth.

Gipps, when promulgating his regulations, made recommendations in a despatch to Lord Stanley, which he did not at the time make known in the colony. He proposed that squatters should have opportunity to purchase their homesteads in blocks of not less than 320 acres. The purchase was to be at auction. If the squatter were the purchaser, he was to reserve the value of the improvements (previously determined), and pay the balance only to the Government. From a purchasing stranger the

Government was to receive the whole purchase-money, and to hand to the departing squatter the value of the improvements. The Government "right to oust the squatter was to remain absolute as at present," and stations were to be resumable without any compensation. Pre-emption was designedly excluded, by adherence to auction in all cases; but Gipps considered that homesteads could be thus obtained on "easy terms." He drew attention to the fact, that all he proposed could be "done by the authority of the Governor," and that it was only because the subject was important, that he considered he ought not to "act without the previous authority of Her Majesty's Government." Public resistance was organized before the acquisition of homesteads by their occupiers was known to be aimed at by the Governor. A large meeting was held in Sydney within a week after the promulgation of the regulations, and Wentworth struck the chord which vibrated throughout the colony by moving the first resolution:

"That the right claimed by the Governor, of imposing arbitrary and unlimited imposts for the occupation of Crown lands, affected the vital interests of the whole community, and rendered the right of imposing taxes by the representatives of the people almost nugatory; that these regulations, if persevered in, must not only be ruinous in their immediate operation, but were calculated to strike a blow at the future prosperity of the colony, rendering the tenure of all squatting licenses precarious, inasmuch as they would be subject to the uncontrolled decision of the Governor, and preventing any accession to the population or wealth of the colony by the influx of capital and labour." "Where was the value," he said, "of electing representatives of the people, if any autocrat could on his own authority impose an imposition of this kind? The Legislative Council, created by law, could not tolerate an encroachment of this kind. It was an opposing power which that body must put down, or by which it must be put down: they could not co-exist."

By settlers, squatters, merchants, and traders, resolutions were carried by acclamation,—an amendment moved upon one of them not finding a seconder. Meetings of like character were held in Melbourne and other places. Large numbers of settlers (and in Port Phillip, where the "boundaries of location" were limited to three counties, settlers were nearly all squatters)

assembled on the 4th June at Batman's Hill, and rode to the meeting in procession. The Mechanics' Institute could not contain the assembly. The meeting was held in the street. Mr. Edward Curr, Mr. Archibald Cuninghame, Mr. Claude Farie, Mr. J. S. Johnston, and others attended. Mr. Alexander F. Mollison was called upon to preside, and he deprecated all display of physical force. As usual, separation from New South Wales was demanded. No plan, it was declared, for settling the terms on which Crown lands should be held would be satisfactory without total separation from the middle district.

A Pastoral Association of New South Wales was formed in Sydney to do battle for the people. Petitions to the Queen and to Parliament were at once prepared, and some fixity of tenure was asked for, for the first time. Mr. Hamilton, an unofficial member of Council, entered the lists on behalf of the Governor, but his admissions that the position of the squatters was precarious, that the time was inopportune for fresh burdens, and that he would "cordially use every exertion in his power to second the efforts of the Pastoral Association," neutralized his letters in the 'Sydney Morning Herald.' Mr. Robert Lowe, under the signature of "a member of the Pastoral Association Committee," entered the lists against him; but unacquainted practically with the condition of the squatters, left the task to others after Mr. Hamilton had sneered at the "pompous announcement that the Spanish merino sheep is essentially a migratory animal," as coming from some one who knew of sheep only from a Cyclopædia. The columns of the newspapers show by whom the controversy was carried on.[1] Lowe's defection from the Governor was at this time complete, but he still held his seat as a nominee, and his doing so was matter of comment. The cause of his defection was personal, and unworthy of relation. He was, however, too logical to allow his public conduct to betray the motives of his

[1] Personal allusions are usually unbecoming: but on a point of such lengthened controversy it may perhaps be excusable to say that the author, in letters published at the time with his name advocated the full recognition of the right of the Crown to sell, as required for the public, the lands held under license by the squatters, and that he resisted the private importunity of some members of the Pastoral Association who urged him to attack the upset price of land, and seek its reduction as a panacea for existing evils.

change: and the circumstances of the time seemed to excuse a large accession on public grounds to the opponents of Gipps.

Men could not but remark, however, that bitter as was Wentworth's manner, his strength was expended on securing what he demanded on public grounds, rather than on seeking occasion for wreaking his wrath upon the Governor personally; an occupation which Mr. Lowe, then flushed in the use of his powers before an attentive public, found peculiarly gratifying. It is to be borne in mind that in his despatch to Lord Stanley in April 1844, the Governor wrote: "I must here distinctly state that I reckon on the maintenance of the Crown Lands Act of 1842. If any doubt be thrown on the permanency of that Act, all will be uncertainty and indecision." From Lord Stanley, the author of the Act, the Governor had no reason to apprehend indecision. That nobleman accorded to him as staunch support as he gave to the Act. Even Earl Grey, who assumed office in 1846, recognized the commanding character of Gipps, and deferred to his judgment. Contemporaneously with preparing his Crown Lands Occupation Regulations, Sir George Gipps was harshly collecting quit-rents, of which on the 31st December, 1843, £55,000 were in arrear.

After many public meetings had been held, Gipps, on the 11th May, put into the hands of an unofficial nominee in the Legislative Council, a paper showing how he proposed to enable squatters to buy their homesteads. A large advance was shown in this paper from the terms recommended in his despatch to Lord Stanley. Persons buying homesteads were thereby to secure undisturbed possession of their runs for eight years. A second purchase of 320 acres was to be attended with similar advantage, "so that each successive purchase of 320 acres will act virtually as a renewal of an eight years' lease. The right of the Crown was to remain absolute, it being well understood that the Crown will not act capriciously or unequally, and will not depart from established practice except for the attainment of some public benefit."

Mr. Icely availed himself of permission to make the paper public, and Gipps, writing on the 17th May, was able to say that it had allayed "in some degree the excitement which previously existed." Some bitter enemies would not believe that it was an

abstract of the proposals sent to the Secretary of State. The Pastoral Association published a protest, drawn up by Lowe, against the projected regulations, "said to have been forwarded" to the Secretary of State. The protest denounced the upset price as unreasonable; the absence of a pre-emptive right as unjust and ruinous to the squatter, who was compelled to compete at auction; the absence of fixity of tenure; the taxation without representation reserved for the Crown; and sundry other faults, amongst which were, that no compensation was offered for risks incurred in seeking runs, many of which were abandoned when found unsuitable for pasturage; and that, as diseased sheep could only be removed in February, "if the auction be not in that month the loss of the run implies loss of the stock."

Gipps transmitted the protest to Lord Stanley with caustic remarks, but did not mention Mr. Lowe. He referred to Mr. Benjamin Boyd, who, as chairman, had signed the protest, merely to show his position as a Crown tenant. Had Mr. Boyd received in Darling's time grants (of the runs he held), the quit-rent on 381,000 acres would have amounted to £3175 per annum, whereas his annual payment was in fact only £80. "If, therefore, the present system of squatting remain unaltered, it is evident that the Government will have gained nothing by the abolition of free grants." Whatever scorn he felt for his late supporter, Mr. Lowe, was condensed in general remarks. The land would be chosen by the squatter as specially valuable. Pre-emption would be contrary to law. The regulations gave fixity of tenure. Auction might be inconvenient, but "the only arrangement free from inconvenience, in the opinion of the Association, would be one absolutely, and for ever, abandoning the rights of the Crown." The taxation complained of was like that of a landlord taking rent, of a butcher making customers pay for their meat, or of the Crown when selling land to a settler. As to compensation for abandoned runs, "a man may make a mistake in choosing a run, as he may in choosing anything else—a leg of mutton, for instance, or a wife; but the Government cannot undertake to guarantee him against loss in the event of his choosing badly." His last comment contemptuously said, that "even in the month of February there will not be many persons anxious to acquire a run infected with disease."

When these remarks in due course became known in the colony by the publication of the despatches in England, they added fuel to the fire of the wrath kindled against the Governor. Meantime Lord Stanley warmly approved of his proceedings. He looked upon the issue as one between the rights of the Crown and the unwarrantable pretensions of the occupiers of Crown lands. He would "resist most peremptorily" the doctrine that the absolute right of property was in the occupier of the land, or that the fees demanded "were in the nature of a land-tax." The question of right was too clear to admit of debate. The justice of the apportionment of payments to the area occupied was also undeniable, and he could come to no other conclusion than that Gipps' propositions were also reasonable. He had no hesitation in submitting Gipps' measures for the Queen's approbation, and had "the honour to be the medium of signifying that approbation."

On one point only he commended to Gipps' consideration, an alteration suggested by the Land and Emigration Commissioners. Gipps had proposed that the purchaser of the homestead should "have the remainder of the run" under annual license. If such should be the practice the Commissioners thought (September 1844) it would be "better to quiet the minds of the parties and give them the desirable feeling of security, by a positive assurance to that effect," and by giving them a license for eight years' occupation of the run. But even in this, so confident was Lord Stanley in Gipps' firmness and judgment, that he would in no wise fetter his freedom of action. How fatal a heritage of hatred they were conferring the Commissioners (Elliot and Wood) did not see. In August, 1845, they repeated that the suggestion was their own.[1]

Lord Stanley's despatch convinced no one. Practical squatters might not be able to discuss abstract questions of civil rights with him; but they felt that he was ignorant of the state of affairs. To sanction, to induce the bulk of the property holders to occupy at a fixed rate Crown lands until they were wanted for sale, and then, when the occupants were *adscripti glebæ*, with millions of sheep and hundreds of thousands of cattle, to

[1] (Correspondence. Licensed Occupation of Crown Lands in New South Wales.) Parliamentary Papers, vol. xxix. 1846.

pounce upon them for an increased rate acknowledged to be arbitrary, was repugnant to men's common sense. The wise and moderate were content to occupy till the land was required for sale. The greedy and rash saw in the repulsiveness of the pretensions of Gipps an opportunity of perverting the present troubles to their own gain. They would aim at fixity of tenure, convertible into freehold by a right of pre-emption. Even in the first outburst of general alarm and wrath were to be heard in private and in public mutterings of this unwholesome design.

But though Gipps would not bandy personalities with Lowe, he did not sit idle under the pelting of the storm. He called in April 1844 for returns, which would show who were the large occupiers in each district, and how much they benefited by the system which enabled a man to hold several runs, whatever their size, under one license; and these returns would, he knew, place in prominent relief, as profiting by inequality of payment, the names of many active members of the Pastoral Association. Four or five of the large holders were balanced against a similar number of the small.

In the district of Liverpool Plains eight persons, Wentworth being one, held 1,747,840 acres under eight licenses. Nine persons in the same district held under nine licenses 311,040 acres. Mr. Benjamin Boyd, Chairman of the Pastoral Association, appeared in the returns for nearly every district, having in company with others bought many properties during the monetary crisis; and the contrast between five persons holding more than a million of acres while five others paid the same fee for holding two or three thousand, was well calculated to serve the purpose of Gipps in breeding suspicion of the motives of the large holders in resisting his regulations. The four largest proprietors (in each district) throughout the colony held 7,750,640 acres. The four smallest (in each district) held 433,460. Mr. Boyd, meantime, forwarded to the Governor the petitions adopted at the meeting, with reports of the speeches; and a caustic article from Lang's newspaper, the 'Colonial Observer,' treated the rights of the Crown as a notorious fiction, by which Lord Stanley and Gipps, his man Friday, "insulted alike the common sense and British spirit of the colony." Gipps transmitted the documents to England, and added the only crumbs of comfort he could find

—Mr. Hamilton's letters to the 'Sydney Morning Herald,' and an article from the 'Weekly Register,' a small and uninfluential journal conducted with ability by the editor, who was devoted to Gipps with a faithfulness eventually rewarded by a Government office.

Such was the aspect of affairs when the Council met for business on the 28th May. Its proceedings may be summarized more briefly than those of the first session, as its prominent members are known to the reader. The treatment of the all-important land question engrossed the attention both of the Legislative and Executive Councils. Two days after the opening of the House Mr. Cowper obtained a Select Committee to report upon "all grievances connected with the lands of the territory." The Governor in his speech had made no allusion to the subject which was exciting all colonists' hearts, though he mentioned that the rate of ordinary expenditure did not exceed the ordinary revenue, and that "the territorial revenue of the Crown alone was encumbered with debt."

Mr. Cowper's Committee "unanimously" reported at great length on the 20th August. Dr. Nicholson and Mr. Lowe; Mr. Windeyer, and Mr. Robinson, a partner of Mr. Benjamin Boyd, were members of the Committee; and though Mr. Lowe in the House did not take up a hostile attitude, in Committee he was sedulous in extracting answers unfavourable to his late patron's policy, and out of doors his impetuosity as an opponent knew no limits. Of the Pastoral Association he was an intimate adviser, and there were not a few who condemned from the first the anomalous position in which he had placed himself by retaining his seat and undermining the patron from whom he held it. The "unanimous" recommendations of the Committee were, that the raising the upset price of land to £1 per acre had been injurious; that the regulations of the 2nd April, 1844, should be recalled; that the license fee should be abolished or reduced to a nominal sum; that various measures for internal improvement should be adopted in the squatting districts; that quit-rents due for more than six years should be waived, and others should be reduced; that the Land Act (5 and 6 Vict. cap. 36) should be repealed; and that the Governor and Legislative Council should have control of the Crown lands and the revenues arising therefrom, after which a duty would at once arise of framing a system of

leases of Crown lands to give security to occupants. They recommended also that Crown grants should vest mines in the grantees, and to this Gipps said he had no objection. "It is in fact already done, except only in respect to mines of silver and gold." Side by side with the report Gipps transmitted comments. He would adhere to the Act of 1842, and supply its deficiencies in respect to squatting. "To allow the large squatters to seize on all the lands of the Crown would be to ruin the colony." Where the Committee had "unanimously" blundered, confusing two clauses of the Act, and misquoting, Gipps curtly exposed the fact. They had condemned his Depasturing Regulations, and he traversed their arguments. To his main text, that the Crown must remain absolute over its own property, he adhered unflinchingly. "It is not pretended or expected that the regulations will give satisfaction to persons whose avowed object is to get fixity of tenure without paying for it." The Committee advocated the remission of quit-rents, which existed on various scales in various parts of the colony.[1] Gipps admitted the inequalities, but was loth to abandon what he called "the only security immediately available" for payment of immigration debentures.

The Committee insisted that Sir Richard Bourke had entered into a compact (on the 18th May, 1835) to surrender to the disposal of the local legislature the surplus of the "Crown lands and casual revenues of the Crown beyond the sum appropriated for the assistance of emigrants." Relying on this compact, the Council had taken upon itself the expense of police and gaols, which had since July 1835 amounted to more than £850,000. Lord Glenelg and Sir George Gipps had been disingenuous, and had bred "distrust in the honour and intentions of the Executive" by attempts to set this compact aside. To a resolution asking him to carry into effect the recommendations of the report, Gipps replied that, "with the greatest possible regret," he was compelled to say he could not

[1] At 2*s*. per 100 acres. 15*s*. per 100 acres. 1½*d*. per acre. 2*d*. per acre.

ANNUAL.	ARREARS.	ANNUAL.	ARREARS.	ANNUAL.	ARREARS.	ANNUAL.	ARREARS.
£671	£10,666	£1230	£7508	£487	£1727	£7629	£35,408

At this time the sheep depastured beyond the boundaries of location were 1,804,096; within them, 1,596,417.

comply, but he would refer all the resolutions for Her Majesty's commands. He prepared a separate paper on the "compact" question. He pointed out that repeated Acts of appropriation by Bourke, *proprio motu*, after the alleged compact, would have been violations of it had it existed. He denied its existence, but considered Bourke's expressions "unguarded." They had been founded on "somewhat loose words" in a letter from the Treasury, in which Mr. Baring conveyed the acquiescence of the Lords Commissioners to the principle of the alleged compact. The real meaning of Mr. Baring's words had been properly explained by Lord Glenelg in a despatch (10th July, 1835), which it was "greatly to be regretted" that Bourke had not made public, as it must have effectually put an end to the idea of a compact, and would have shown that only the portion unexpended by the Crown was to be transferred to the ordinary revenue. In this separate paper, or "memoir," Gipps launched into no scornful or homely epithets such as he was wont to indulge in, in controversy. It was rigidly official and explanatory, as though he had written it with a view to publication. It may be presumed that he was not prepared to see his marginal comments on the Report of the Committee printed in the Parliamentary Papers, as they were, in 1845.[1]

Before Gipps sent his despatch with the report, he had submitted the subject of his depasturing regulations to his Executive Council, which contained the Bishop (Broughton), who had declined to take a seat in the new Legislative Council. In 1842 the Bishop had urged that inducements should be given to convert the squatter into a freeholder. In 1844 he had, in a paper laid before the Executive Council on the 24th March, and transmitted to England by Gipps, advocated that some constraint should be used to induce the squatter to buy land. He began to doubt the propriety of leaving an option. He would fix recurring periods at which the Government should sell portions of a squatting run, and the purchaser at any period should be *ipso facto* entitled to the Crown lands forming the run. The

[1] Parliamentary Papers, vol. xxxii. 1845, House of Commons. The Colonial Office drew irregular lines in publishing despatches. Sometimes it published remarks clearly private, sometimes it withheld statements as plainly public. A cautious Governor ought to have worded his despatches so that he might be willing to see them published on the spot.

new ideas were not commended to many by the fact that the Bishop propounded them. Gipps declared to the Secretary of State that the views developed by the Bishop were "entirely in accordance with" his own, and in September 1844 he asked the Bishop and the other members of the Executive Council for advice upon the report of Mr. Cowper's Committee (which rumour attributed to Lowe). The able Bishop supplied him with a fresh paper in the same month. He pointed out that numerous witnesses had asserted, without proving, that £1 per acre was a ruinously high price. He traversed such arguments as he found, and concluded by saying that after well weighing the report there was nothing to induce him to recommend alterations in the regulations of April (2nd and 3rd), beyond slight modifications which did not affect their principles.

Gipps himself laid a formal paper before his Executive Council. Its first sentence was: "I entirely concur with the Bishop of Australia in the opinions expressed by his Lordship in the paper which has just been read." He still thought the Act of 1842 should be maintained; but "if it be decided to open it to amendment, various questions—the first and most important of which is that of 'pre-emption'—will present themselves." (The pre-emption in question concerned only the homestead block, containing the squatter's principal improvements.) He objected to the right of pre-emption as leading to a species of "scrambling for land," and throwing land affairs into confusion. But he felt that influences were at work under which it would "probably be conceded." There was "an impression in favour of it in England," and though he could "not take the responsibility of recommending he was prepared to acquiesce in it." Against the granting of leases of longer duration than a year he retained his objections unaltered. After dwelling on practical points he concluded by earnestly desiring that the dues from Crown lands should be fixed by law, and the revenue similarly appropriated, or if that should be inexpedient, that it "should at any rate be done in the Queen's name, and in the most formal and binding manner, so that the extraordinary powers now left to the Governor may be narrowed as much as possible."

He penned these words while he was being denounced in the Legislative Council as a tyrant, and respectfully requested that

his own and the Bishop's paper might be considered with the report on which they commented. He was right in believing that influences were at work in Great Britain. Not only were individual friends of colonists pushing their views, but a "Glasgow Association for the promotion of the squatting and general interests of New South Wales," transmitted a memorial[1] to Lord Stanley. They attacked Gipps' squatting regulations. They advocated what Gipps deprecated—long leases of the runs. Their chairman was important enough to represent Argyleshire for many years in the House of Commons.

A meeting held in London in May 1845 (by merchants, bankers, and others more or less connected with Australia), appointed a deputation to wait upon Lord Stanley, and urge the claims of the colonists. Lord Polwarth, of ancient lineage, presented the memorial adopted, and one of its recommendations was the granting of leases of runs for twenty-one years. Both the Glasgow Association and the London deputation attacked the Squatting Regulations of April 1844. The Colonial Office, thus besieged, received a wholesome warning from another quarter against converting the license to crop grasses into a long lease convertible into freehold.

Though New South Wales was the principal arena of battle, other colonies were affected by the struggle. The small population in South Australia (25,000, including men, women, and children) did not cast longing eyes upon the wide expanse of their territory. Their pioneers had from the first contemplated the creation of an agricultural yeomanry. Governor Grey, in January 1845, pressed their views upon the Secretary of State. The granting of leases of runs to the squatters was recommended; no cultivation of rented land being allowed, and the rent being determined by the quantity of stock depastured. Pre-emption was not advised, but sale by auction of a block containing homestead improvements. Power to sell after three months' notice any portion of a rented run was recommended, and allowance of grazing rights on land contiguous to portions sold. The disinclination to give to the licensed occupant of Crown lands an exclusive tenure or pre-emption in South Australia afforded matter of reflection to the Secretary of State.

[1] Parliamentary Papers, vol. xxix. 1846.

Anxious to act, he was unwilling to do so until he could peruse and discuss with others the report of a Select Committee of the Legislative Council of New South Wales on the subject. It was felt that in the most populous colony the interests affected were most important, and the ability of Wentworth, the acknowledged leader of the representative members, commanded consideration. After the report was received in March there was not time to discuss and to legislate. On the 7th August, 1845, Lord Stanley replied to Gipps' despatch of 30th September, 1844. He informed him that an abortive Bill to regulate the sale and management of waste land had been introduced and sacrificed. He transmitted a draft of it.[1] It purported to legalize leases for terms not exceeding seven years, and (to licensees for five years previously) a lease could be given without auction on terms to be fixed by the Governor and Executive Council. It expressly enabled Governors to reserve minerals wholly or in part. It maintained the power to grant annual licenses. It established an agistment for stock depastured on Crown lands. Lord Stanley explained that in conceding leases without auction he had yielded to "gentlemen connected with New South Wales," who represented the extreme hardship which would be inflicted on licensees if liable to be deprived at auction of the "stations which they had occupied and improved." In a confidential despatch, Lord Stanley asked for any suggestions which Gipps could offer "to diminish the risk attendant upon the concession of leases." Mr. Latrobe, the Superintendent at Port Phillip, was averse to the issue of leases. In that province he who ran might read their evils. Not as at Sydney, separated by more than a hundred miles of comparative barrenness from the coast, but spreading to the very shore, rich lands invited the earth-hungerer. The rich patches in the settled districts of New South Wales were not held by preferential

[1] There had been two Bills. One, read the first time on the 18th July, was opposed at its second reading by Messrs. C. Buller and Aglionby on the 30th July. Significantly enough it was brought on about two o'clock in the morning, and the second reading was carried in a House containing little more than a quorum. On the 8th August, Mr. Hope brought in a second Bill, which contained the amendments he had intended to make in his first, and on the 9th August the session ended. Lord Stanley explained the circumstances to the Governor.

license. They had been purchased of old, and no man sought to dispossess the proprietor. But the right of the licensee was not respected in like manner, and though the arbitrary method adopted by Gipps had combined the community as one man to resist him, there was from the first a nucleus of a party which was to grow with the population, and to be ready to tear asunder all bonds by which the squatter held Crown lands in derogation of the cupidity of a more numerous body desirous to go in and dispossess the claimants by prior occupation. At Port Phillip—just outside of the boundaries of the counties on the coast, at Melbourne, Geelong, and Portland—within a day's ride from the towns—were rich tracts inviting envy; and Mr. Latrobe prudently shrank from locking them up. The Land and Emigration Commissioners had qualms about enforcing the leases they had suggested. They thought the views of Sir George Gipps should be obtained. Lord Stanley asked him for "an unreserved expression of opinion upon every part of the Bill."

Sir George Gipps complied in January 1846, and suggested the exact alterations he thought needful. One of them limited the area which might be leased to 320 acres, "in order to point out that homesteads only, and not entire runs, are to be let without competition." Confidentially he wrote:

"If I rightly understand Mr. Hope's Bill, runs are not to be let except by public competition, and I consider this a salutary provision. I foresee indeed that a struggle will be made to procure leases of runs as well as of homesteads, without competition. But if this be conceded a discretionary power must be given to the Governor, the exercise of which will impose on him a fearful responsibility . . . which I am disposed to think should not be imposed on any man, and I therefore advise that the Bill be passed as it at present stands, with a power of letting homesteads by private bargain, but runs only by public competition."

But he would not forcibly convert the occupier by annual license into a lessee for a term. He thought that "for the present at least no run should be disposed of by lease at auction except on the application of the occupier." He had thought much on "pre-emption without being able to hit upon any

scheme by which it could be granted without danger, and the concession of leases will, I hope, cause the demand for it to be laid aside at any rate for the present."[1]

If Lord Stanley had continued longer in office, or if Earl Grey, who assumed it on the fall of the Peel Ministry, had adhered either to the Wakefield theory of which his friend Charles Buller was the humble follower; or even if Earl Grey would have been guided by the strong common sense of Gipps, a just settlement of the question might have been made.

Whether compelled to obtain ideas from others, or prone to seek them in wrong places, Earl Grey succeeded (as will be seen) in putting the Government into a position from which it could not extricate itself without damage to its own honour or to some

[1] Much attention was drawn to a long letter addressed by Bishop Broughton in January 1846 to a friend in England. By permission, Gipps sent a copy to Lord Stanley. In November 1845 the London 'Times' had assailed the Land Regulations of Gipps, and the Bishop's share in supporting them. The Bishop explained and justified himself. The Crown lands were "the rightful patrimony of all the people of the United Kingdom," and it was not "reconcileable with the rules either of justice or of sound policy that they should be suffered to slip away from their proper owners and be made the private property of the few hundreds of persons at present in occupation of them." Social, moral, and religious considerations loudly demanded the interposition of Government in order that the community to be spread over the interior should be redeemed from the debased life which would ensue if the Crown licensees should have no encouragement to form decent permanent homesteads, and Christian civilization should not prevail amongst them. Therefore the Bishop had urged the alienation of freeholds of select and limited portions; but to convert whole runs into freehold would be "to sacrifice and make away with the patrimony of the people." ... "It may be very possible to set in motion the vast machinery of the 'Times' to mislead the public upon this question; but if I had access to the hearing of the people I should recommend them to look carefully after the interest which they, one and all, have in this great territory. Indeed I must say that our Governor and his Executive Councillors would have deserved impeachment if they could have so consented to tamper with those rights, which are the rights of the Crown only because the Crown is in trust for the good of the people. I hope you still continue to be staunch Tory enough to approve this principle; for my part I still keep to the old persuasion in the midst of all the changes which have taken place; but when we used to talk the matter over so many years ago I did not expect that I should come to this remote quarter of the world to find a confirmation of our favourite notion that the rights and liberties of the people are best maintained by giving due support to the prerogative of the Crown." Parliamentary Papers, vol. xxix. 1846.

large interests which relied upon its good faith—in conferring boons which he had been warned were unjust—in encouraging an unjust withdrawal of them, and in creating class hatreds which were to poison men's minds for long years to come.

The land question which it has been thus necessary to trace to the close of the career of Gipps was not the only stumbling-block in 1844. In June, Wentworth obtained a Committee to inquire into "all grievances not connected with the lands of the territory." Not content to wait until the Committee could report, he moved on the 18th August:

"That this Council do not proceed to the consideration of the estimates for 1845, until so much of the territorial and casual revenues of the Crown as is not appropriated by the 5th and 6th Victoria, cap. 36, be placed at the disposal of this Council, in pursuance of the compact made between his Excellency Sir Richard Bourke in 1835, and the late Legislative Council, under directions from the Lords of the Treasury."

As in 1843, so in 1844, the majority shrunk from so violent a course. By adopting it they would produce infinite distress, and might in the end undergo the humiliation of retracing their steps. Mr. Murray moved an amendment requesting the Governor to place the unappropriated territorial and casual revenues at the disposal of the Council: but even this was not carried. The previous question was moved, and only seven members voted that it should be put (amongst whom were Wentworth and Murray), while twenty-four were arrayed against it. It suited Dr. Lang to cling to Wentworth for support. In debate at this time he said "he had no small misgivings in following him in debate, for he regarded the honourable member for Sydney as one of those larger bodies in our solar system that are seen to throw into eclipse any body of smaller dimensions that came within the range of their influence." Undaunted by defeat, Wentworth pursued his labours in Committee, and in December obtained the assent of the Council to his report. Some of its terms were bitter.

"In defiance of the solemn compact as to the casual and territorial revenue, it would seem to have been a favourite if not paramount object with Sir George Gipps from the first moment of his arrival

among us, not only without any sanction or authority from the Home Government, but, as far as appears from the printed correspondence on the subject, in defiance of his instructions — to sow the seeds of that controversy and contest about this particular branch of the public revenue which was the original source and ultimate cause of the rebellion in Canada. It is the unauthorized and mischievous policy here denounced . . . which enables the Colonial Executive to set at defiance the opinions of a majority of the Council, and to trample with impunity on the most sacred rights of the community it represents."

It was unfair to visit upon the head of Gipps the consequences of a blunder of Wentworth's friend, Governor Bourke, which the sagacious Colonel Arthur had refused to commit in Van Diemen's Land. But Wentworth was unmerciful in battle, though he could be generous at its close. His demands in the report were comprehensive. He required the repeal of the Civil List Schedules; and that the control of the general revenue should be vested in the Governor and Legislative Council: that the District Council clauses of the Constitution Act should be repealed: that the police, gaol, and judicial expenditure should be adjusted on the terms recommended in the report: that the government of the colony be conducted on the same principle of responsibility as had been conceded in Canada: that machinery be provided for prosecuting, under due limitations, claims against the Crown or local government, and the establishment of a tribunal for impeachments: that the Judges of the Supreme Court be placed on the same tenure of office and security of salary as the Judges in England enjoyed, in order to prevent the purity of the administration of justice from being hereafter subjected to any suspicions or doubts in the minds of Her Majesty's subjects in these colonies. On all these demands, except the last, there were divisions. The nominee phalanx was overwhelmed in all, excepting that on the concession of responsible Government. On the police and gaol expenditure several unofficial nominees deserted their friends, but Roger Therry, though an elected member, bore the yoke which was too heavy for them. Immediately Wentworth moved addresses to the Queen and to the Houses of Parliament setting forth the claims of the colony as to the police and gaol, and the judicial, expenditure. The charge thrown on the colony

was enormous, and arose from the presence of British criminals. Besides the demoralizing and contagious influences of the prisoner population, the pecuniary cost was intolerable, and prevented the colonists from providing funds for education, and for indispensable public works. Either the sum of £793,034 10*s.* 8*d.*, due to the colony for arrears, should be granted, or 59,788 free immigrants of moral and industrious habits should be sent out at the cost of the Home Government, and an annual charge of £74,195 6*s.* 8*d.* should be borne by the Imperial Treasury, a loan being raised on the lands of the colony to promote internal improvements. This address was also carried by a narrow majority; but, as before, the elected members outnumbered the nominees. To the request that he would transmit this and other addresses Gipps replied comprehensively when proroguing the Council. He would transmit them, and they would no doubt receive attentive consideration, but months must

"elapse before Her Majesty's replies can be received, and I consequently consider it my duty openly to declare my opinion that many of the demands of the Council are such as never will be granted—such indeed as never can be granted unless it be the pleasure of Her Majesty and Parliament fundamentally and entirely to alter the relations in which the country now stands to the British Empire."

Such a shaft should not have been shot from such a bow. He had conveyed the addresses formally and without comment, and he would have consulted his peace of mind and dignity if he had been equally formal in acquainting the Council with the fact. To the address praying that Her Majesty would not withhold her assent from any Act vesting the management of the lands and the revenues arising therefrom in the Governor and Legislative Council, Lord Stanley was commanded to reply that Her Majesty did "not think it necessary or convenient to enter into any statement of the course she might be advised to pursue in what appeared to Her Majesty so improbable a contingency."

To the General Grievances Address, Lord Stanley replied in effect that in Canada Her Majesty's representative was commanded to govern in strict accordance with the terms and spirit of the law of the province. Gipps must do the same. "In

neither case has the Queen entered into any statement of any theory or abstract principles of colonial government; nor is Her Majesty advised that to discuss such theories, or to propound such abstract principles, forms any branch of the duties which the laws and constitution of the British Empire call on her to discharge." As to an impeachment tribunal, till a plan for it was brought before Her Majesty in a definite shape, no opinion could be expressed: even in Canada the difficulty of establishing one had been found insuperable, and it existed in no British colony. As to the Judges, Her Majesty had no objection to their tenure of office being during good behaviour, and not during the pleasure of the Crown, if on further reflection the Legislative Council should desire the change. But provision must be made for "ascertaining when the condition of tenure of office is broken;" and Her Majesty was not prepared to relinquish the control over proceedings for removal or suspension of Judges in British colonies.

[1] "With regard to the claim of the Legislative Council to advances of money from the British Treasury in repayment of an alleged debt from this kingdom to New South Wales, Her Majesty thinks it necesary to state, in the most unequivocal terms, that being advised that no part of the asserted debt is really due in law or in justice, Her Majesty cannot recommend to Parliament to make provision for the payment of it."

Petitions for relief from the District Councils clauses were numerous. A Bill on the subject was promised in the Governor's opening speech. On the 25th July it was read a first time. On the question of making the second reading an Order for a future day an amendment was carried:

"That in the opinion of this Council, the District Councils are totally unsuited to the circumstances of this colony, the country districts being unable to meet the additional taxation which would necessarily be required in carrying out the various objects contemplated by their institution, and the cost of the machinery requisite for bringing them into operation being of itself an obstacle fatal to their success, and that therefore the second reading be postponed to this day six months."

On the same day a Police Assessment Bill was not allowed to be read a first time. On the 9th August, on the motion of Mr.

Cowper, the reason of the loss of the District Councils Bill was communicated to the Governor in an address praying that he would recommend the repeal of the District Councils clauses; and pending instructions from England, would "make provision from the general revenue for such objects as it was intended should be provided for by the District Councils." Gipps replied on the 20th, that the Bills being rejected he would "accept such sums as the Council might place at his disposal for the maintenance of the police force in 1845, disclaiming any share in the responsibility which this infraction of the constitution may involve." The Council seemed determined to increase the Governor's difficulties, even at the cost of the public. In Committee on the supplementary judicial estimates (29th August) they resolved that as they ought to fix all details, and the Governor had rendered impossible the performance of their duty by submitting the supplement in connection with Schedule A, the right to deal with which was denied by the Secretary of State in the session of 1843, they "in assertion of this their undoubted right and duty, declined to enter into any consideration of the required supplement." The Governor promptly replied, that as the Council declined to grant additional sums he would take measures for limiting the expenditure for administration of justice to the amount provided in the Schedule A, and would "advise with the Judges upon the manner in which this may be done with the least possible amount of inconvenience to the public." Wentworth then carried a resolution to the effect that the former resolve was no absolute refusal, but qualified so long as the sum asked from the Council was in gross and not in detail; that the casual revenue arising chiefly from fines and penalties in Courts of Justice (improperly withheld from cognizance of the Council) was an ample fund to supply the deficiency; and that "to prevent any misapprehension which might arise in the mind of Her Majesty," the resolutions of the Council should be presented in a humble address to Her Majesty. To this address Lord Stanley couched his answer in peculiar terms. Her Majesty was satisfied that Gipps' language appeared to him

"to convey the most accurate report of what had occurred in 1843 respecting the abolition of, or the failure to provide for, certain offices,

but Her Majesty was not less firmly convinced that the objections of the Legislative Council have been suggested by no other motive than that of rescuing themselves from what they have regarded as an unmerited censure. Her Majesty trusts that no misapprehension which may have occurred on either side will interrupt the harmony with which the labours of Her Majesty's representative in the colony, and of the Legislative Council, for the good of Her Majesty's subjects there, should be conducted."

What the harmony really was, was shown in 1844 in December, when on a motion by the Colonial Secretary that a Bill for authorizing allowances to witnesses in Courts of Justice be read a first time, Wentworth carried an amendment referring his Excellency to the former resolution as to the casual revenue, and the Bill was summarily strangled.

Lord Stanley preached peace when there was no peace. Mr. Lowe, though abstaining from open hostility in the Council, was inveterate out of doors, and in labours in Select Committees. The education question afforded him a two-edged weapon. The Bishop was anxious to maintain the denominational system, while the Governor was known to have been desirous to establish a system comprehending all without interfering with the tenets of any. But the Bishop's ability had been a strong support to the Governor on several occasions. A crisis which would set such friends at odds on education would be doubly happy. Mr. Lowe obtained in June a Select Committee on the subject, and on the 28th August brought up its report, and resigned his seat on the same day. He had been taunted with treachery by many, and in the Council Roger Therry compared him to the adder, which stung to death the benefactor who had warmed it to life and strength in his bosom; and not even the wide gulf between the abilities of the two men could make the taunt easy for the superior to bear. For the time he was unpopular in Sydney. He had referred in the Council to an alderman of the city in terms which induced that functionary to send him a challenge. It was declined in language which alluded to the humble antecedents of the challenger. Mr. Lowe brought the matter before the Council as a breach of privilege. A Select Committee was appointed. The Council adopted its report, and the Speaker was instructed to request

the Attorney-General to file a criminal information against the challenger and his abettors. The Attorney-General, Mr. Plunkett (who had returned after leave of absence during which Mr. Therry had filled his office), complied, and the proceedings eventually broke down on technicalities. A large public meeting, held in the mean time, denounced the prosecution on behalf of Mr. Lowe at the public cost, as unconstitutional, oppressive, and unjust; declared that the ordinary tribunals were sufficient to protect members in their privileges; and prayed the Governor to sanction no disbursement from the public funds for the purposes of the prosecution. The Governor placed Mr. Lamb, a merchant, in the seat vacated by Lowe. Sir Thomas Mitchell, the Surveyor-General, defeated at Port Phillip in 1843, had been elected to fill a vacancy for that province in 1844. The distance from Sydney made the attendance of Port Phillip residents in Parliament so difficult that three out of the six members allotted to the district and to Melbourne had resigned, and two who took their seats in 1844 were Government officers,—the Surveyor-General, and the Sheriff. The former was soon warned by Gipps, that though as Sir T. L. Mitchell, an elected member, he was welcome to his opinions, as the Surveyor-General of the colony he could not be allowed to oppose the Government. He resigned his seat at once. The matter was new to the colonists, and was much discussed. Sir George Gipps' enemies unjustly accused him of tyranny. Without a strong bond of general agreement with the Governor's policy a public officer ought not to have become a candidate for election. With it, the post might have been useful and honourable. In the following session Gipps laid before the Council an extract from a despatch of Lord Stanley's stating the conditions of the problem thus:

"If Her Majesty's officers think fit to assume relations and responsibilities disqualifying them for the support of Her Majesty's representative, they are of course perfectly free to do so, but having done so cannot be permitted to retain their employment; otherwise there would not only be an end to all concert and subordination in Her Majesty's service, but the sincerity and good faith of those by whom it is administered would be brought into serious discredit. I am not forgetful that any general rules which could be laid down on a subject of this nature must require qualifications and exceptions, which it is

not possible distinctly to foresee and to provide for. I refer to your own discretion the application to particular cases, as they may arise, of the general principles which, I apprehend, will be sufficiently clear for your own guidance, and for the information of the officers of the Crown serving under you."

There was so wide a difference between the mental constitutions of Sir Thomas Mitchell and Roger Therry, that what was intolerable to one was pleasant pastime for the other. But, while Mitchell was disposed of, Lowe was working. The report on Education recommended that Lord Stanley's (or the Irish national) system should be established, and that adherence to it should be an indispensable condition under which public aid should be granted. Forthwith the table of the Council groaned with petitions against the system recommended. Its friends presented petitions in its favour. Meetings showed that though the presumed leaders of public opinion were in favour of the change, there was strong disaffection among their usual supporters. On the 4th October, Mr. Robinson (a Quaker) moved resolutions adopting the report of the Committee. Windeyer moved a modification of them. After an adjourned debate Wentworth carried, by a majority of one in a House of twenty-five members, the following resolution:

"That it is advisable to introduce Lord Stanley's system of national education with this modification, that instead of the clergy and pastors of the several denominations being allowed to impart religious instruction in the schools, the children be allowed to be absent from school one day in every week exclusive of Sunday, for the purpose of receiving such instruction elsewhere, but that all denominational schools now in existence having school-houses already built, which have been or shall be within the next twelve months conveyed in trust for the purpose of the school, and having now, or which shall have within the next twelve months, an average attendance of fifty scholars, shall be entitled to aid from the Board."

In this and ancillary resolutions Wentworth was supported by Deas Thomson, Plunkett, Therry, Lang, Bland, Robinson, and others; while Riddell the Treasurer, the Collector of Customs, Windeyer, Cowper, Nicholson, Darvall, and others opposed him. The Governor cautiously replied to the Address of the Council. He declared his entire adherence to a com-

prehensive system, but entertained doubts whether the time had arrived at which it could be introduced successfully. Twice had Government proposals been withdrawn, and the opposition which Gipps himself had encountered was, he regretted to say, in no way diminished. Without the co-operation of ministers of religion it was scarcely possible for any system to be extensively useful. There was also a new practical difficulty in the way, inasmuch as by the 42nd clause of the Constitutional Act the public schools were required to be dealt with by District Councils, which bodies he remarked, with scarcely veiled sarcasm, "are not, I fear, as yet in a condition advantageously to exercise" the necessary functions.

On the 17th December, Robinson moved an address which, as amended by Wentworth, was adopted by twenty-two votes against five, requesting the Governor to place £2000 on the estimates to establish and support such schools as by Wentworth's resolution had been approved. Gipps pointed to the state of the revenue. His original estimates had omitted to provide for schools, because the District Councils were called upon by law to do so, and even then the income scarcely balanced the expenditure. At the request of the Council he had subsequently made provision "for such objects as it was intended that the District Councils should provide for, though in so doing he, for the second time, exposed himself to the imputation of disregarding an Act of Parliament." There was now a deficiency, and he had already expressed his doubts whether any alterations with respect to schools could be advantageously introduced. On the day on which the Council received this reply, Wentworth carried his General Grievance resolutions. During the session Mr. Elwin, who had acted as honorary Chairman of Committees, resigned his seat, and Dr. Nicholson was elected to the post for which Gipps, at the request of the Council, made provision in the estimates. On Dr. Bland's motion, Wentworth's brother was proposed in opposition to Nicholson, who was nominated by Cowper. Major Wentworth lost the election by two votes.

Early in the session Nicholson procured a Committee upon "insecurity of life and property." Whether the increase of crime was caused by the return to the colony of "expiree

convicts from Norfolk Island," and whether the Queen should be petitioned to prohibit their return, were matters specially referred to the Committee. The colony had always been subject to outbreaks of the bolder and more desperate convicts, but bushranging could hardly be said to be more prevalent in 1844 than in the most peaceful times. Burglaries and thefts in Sydney and its suburbs were committed, not by open highwaymen, but by the foul spirits who lurk in all large cities and ply their villainy in the dark. The returned convicts augmented this fraternity of rogues. Darling's Act had repressed bushranging. Occasionally three or four desperadoes would band together, and after a career of a few days, weeks, or months, would come to an untimely end. Four of them in 1840 shot, near Gunning, Mr. John Kennedy Hume (a brother of Hamilton Hume the explorer), who refused to lay down his arms when ordered to do so. The lives of murderers being doomed, their recklessness was unbounded. They became a terror to the district between Goulburn Plains and the Murrumbidgee river. Few ventured to make any show of resistance.

Mr. Oliver Fry was notable for more than one capture of minor bushrangers, and the four attacked him in his hut. Only a small boy was on the premises to aid him in loading his gun. After much firing on both sides, Fry shot one of the robbers, and the others after a time retreated. Eventually they were encountered by the police. One (Russell) being wounded, shot himself rather than suffer capture. Whitton and Reynolds were taken. The latter hanged himself in prison in Sydney with a noose manufactured from his clothes; and Whitton died on the scaffold at Goulburn. There were other gangs of marauders at various times, but these men were nearly the last representatives of the daring scoundrels of the convict class whom Darling's Act had almost succeeded in stamping out.

The report of Nicholson's Committee was adopted generally by the Council. It was resolved on his motion, "That the importation of prisoners from Norfolk Island to Sydney is an intolerable grievance, entailing upon the colony in an aggravated form all the evils, without any of the benefits, of the convict system." The assembling of from six to eight hundred convicts in a single building (Hyde Park Barracks) was also denounced; the

management of them was sharply condemned: it was advised that the convicts should be sent to work on the country roads, under proper guards; that no convicts should be allowed to remain in Sydney; that no tickets-of-leave should be granted in Sydney or any other large town; and that any reduction of the military stationed in the colony would be dangerous to life and property.

Gipps promised to send the address to England, but regretted that he could not remove the convicts from Hyde Park Barracks to the country. In the Barracks they were maintained and clothed at the expense of the Imperial Government;—if removed to the country they would form a charge on the colonial revenues which they were in no condition to bear. He apprehended, moreover, that the facilities for committing outrages would be increased if the convicts were placed in the rural districts.

There was a sudden alarm in Melbourne in 1842. Four men, only one of whom had been a convict, and one was a sailor, were seized with a desire to become brigands. They comported themselves with such noisy violence that they seemed to invite detection, and a band of settlers, amongst whom Mr. Peter Snodgrass (a son of the Colonel Snodgrass who officiated as Acting Governor in Sydney between the departure of Sir R. Bourke and the arrival of Sir G. Gipps) and Messrs. Chamberlain and Mr. Henry Fowler were active, started in pursuit. One of the robbers was shot, and the rest were captured. Mr. Fowler was wounded seriously, and others of the captors were injured in the struggle. The prisoners were found guilty, and were executed in Melbourne.

Dr. Lang having placed his foot on the ladder of popularity lost no time in ascending. He was chairman of a Committee which reported that it "would not withhold the franchise from the illiterate." But universal suffrage, the weapon with which demagogues hope to obtain their own ends, was not then suggested. A resolution was carried in favour of extending the franchise to leaseholders of land of the same annual value (£20) as that which, under the Constitution Act, entitled householders to vote. A resolution to extend it to licensees on Crown lands was shelved by the "previous question."

The large indebtedness of the Bank of Australia (nearly a quarter of a million sterling) has been mentioned already. It

was believed that innocent shareholders of all ranks would be plunged into destitution if no remedy could be applied. Wentworth brought in a Bill which, on his motion, was referred to a Select Committee. He proposed to enable the Bank to dispose of its assets by lottery. Levying on the shareholders would produce "a panic which would annihilate the value of property." The Bill was not to be drawn into a precedent; it was put forward as "the only adequate remedy for a great public danger, a danger which threatens nothing less than the disorganization of society by the confiscation of that property for whose protection it mainly exists." Farms, allotments, shares in steamers, sheep-stations, were to be prizes. Grave business men, examined as witnesses, thought the measure justifiable. Mr. Lowe, though fresh from the old world, thought it should not, under the circumstances, be rejected. The Attorney-General, Plunkett, ever staunch to what he deemed right, opposed the Bill, and on the third reading moved that it be read that day six months. Only Dr. Lang and Mr. Robinson supported him against eighteen members representing the ability of the Council. Gipps reserved the Bill for the signification of Her Majesty's pleasure, doubting the competency of a Colonial Legislature to legalize a lottery. He forwarded a petition from the chairman and directors of the Bank, praying that it might be assented to, and said it would give him much pleasure, though he scarcely ventured to hope that the Bill would be allowed. Lord Stanley promptly declared that the Queen would not be advised to assent to the Bill. He did not adopt the opinion that it was repugnant to the law of England, but lotteries were viewed with disfavour, and were immoral. He could not establish a contrary precedent. Eventually, nevertheless, the shareholders were relieved by the very process which the Bill proposed, though unsanctioned by law. They had in the mean time been worsted in litigation with the Bank which had lent them money, and after appeal to the Privy Council £176,000 had to be paid. Prompt men of business at this apparently last gasp took the matter in hand, issued a prospectus, and carried out the lottery before the machinery of the law could be set in motion against it. By many entirely unconnected with the Bank the result was held to justify the means, and large numbers of the old proprietary were relieved

from suspense. They had lost their capital, but their homes were left. The lottery satisfied the claims of their creditors and their unlimited liability troubled them no more. A Bill to amend the Lien on Wool Act was brought in by Wentworth and passed; but as an amendment, proposed by Gipps in a message, was not adopted, the Royal Assent was withheld. An Interest Bill was passed. Some of the opponents in 1843 became supporters in 1844. Gipps reserved it for Her Majesty's pleasure.

An attempt was made by the Imperial Government to legalize the reception of evidence of the aborigines, under qualifications. An enabling Act was sent by Lord Stanley to Gipps, who promptly introduced a Bill. It was thrown out on the second reading; Mr. Lowe's eloquence being vigorously exerted against it, although he was as ignorant of the circumstances of the natives as he was of the scenery in Saturn. His speech might have been made in a debating society in an English village. Others, with less excuse for ignorance, concurred, and it is painful to find Wentworth's name among the opponents of the Bill. Dr. Lang, Windeyer, and Dr. Bland supported Deas Thomson and Plunkett in promoting the Bill. Other matters were commanding attention at the time. Abstract rights of God's creatures gave way to grievances against Gipps and the Colonial Office, and to the pleasure of thwarting the former.

The fortunes of Port Phillip were bound up with those of New South Wales; and the care of them was no small addition to the Governor's troubles. The first Judge of the Supreme Court, Willis, though able, allowed his temper to betray him into violent eccentricities. Unseemly altercations in Court, and high-handed committals, on his personal authority, exercised even in the streets, lowered him in the eyes of respecters of decency. A memorial praying for his removal was signed and sent to Gipps; and in 1843 he was "amoved." He appealed to the Privy Council, and in 1846, after long argument, it was decided that Gipps had sufficient ground for amoving him, but ought to have given him an opportunity of being heard before making an order. The order was reversed. Willis, whose counsel had stated that his object was not to be replaced, but to make himself eligible for the bounty of the Crown, tendered his resignation. It was not accepted. A warrant was issued which revoked his appoint-

ment, and directed that salary should be paid to him for the interval between the date of the order of amotion and that of the warrant of revocation.

It has been mentioned that at the great meeting in 1844 to protest in Melbourne against Sir George Gipps' "Squatting Regulations," it was resolved that no plan could be satisfactory which was "not based upon total separation from the Middle District." Mr. Edward Curr was looked upon as the chief local champion of separation. No sweeter cup was ever put to the lips of Dr. Lang than that which enabled him to drown Curr's chances of election in Melbourne in 1843. He resolved to rob the rejected Curr of all honour in the matter of separation. It was easy to see that the good-will of dwellers in Port Phillip could be secured by exertions to obtain separation. In August 1844, Lang moved a resolution praying that steps might be taken to obtain it. He adopted all but one of the local arguments, but he named none of the arguers. He objected to their *ad captandum* allegation that they were subject to "moral contamination" from connection with Sydney. It was "pre-eminently absurd." The motion was lost by six votes against nineteen. Mr. Robert Lowe was the only man, not a member for Port Phillip, who voted for it. A petition to the Queen was then prepared, and was signed by the Port Phillip members—J. P. Robinson, Dr. Lang, T. Walker, Dr. Nicholson, A. W. Young, and Benjamin Boyd. All of them were residents in Sydney. The distance from Melbourne deterred local candidates. Lord Stanley, in June 1845, announced that the petition had been graciously received, and directed the Governor to conduct a careful inquiry in his Executive Council, and if separation should be thought advisable, to point out a fitting boundary. To the surprise of the Port Phillip people the Council advocated the separation asked for. When Lord Stanley's favourable response was made known, Dr. Lang visited Melbourne to rejoice, and to swell his popularity.[1] A festival was held on the 11th February,

[1] He complained movingly of the jolting of the mail-cart. A gentleman travelling by it shortly afterwards asked the driver how it was that he had shaken Dr. Lang so much as to make him ill. The man said confidentially, "Well, Sir, I knew he was a member for the district, and I thought if I could give him a jolt or two, I might get something done for the roads. I *did* give him an awful one over that boulder when he wasn't looking out."

1846. Alderman Moor presided. Alderman Condell, who had been the engine wherewith to hoist "the father of separation," was present with Dr. Lang's fast friend, Dr. Thomson. But Edward Curr, who had borne the burden and heat of the day, did not go to see another reap the harvest which he had sown. For a time the ears were barren, except of popularity, and long and loud complaints were raised. It is almost needless to say that by demands for separation while their population was small the inhabitants made it a consequence, if not a necessity, that their boundary should be more closely contracted than if they had been less precipitate. But they were always eager. In March 1846 Mr. Latrobe laid the foundation of a bridge (Prince's Bridge)[1] across the Yarra-Yarra, and Dr. J. F. Palmer, the Mayor, laid the foundation-stone of the Melbourne Hospital. The shops were shut. The people were in ecstasies, and the newspapers said that it was a fairy scene, enchanting like those in the 'Arabian Nights.'

A large gathering took place in Melbourne in 1845 to remonstrate against the inclusion of the lands of Port Phillip as security for a loan proposed to be raised on the territorial revenue in aid of immigration. A delegate, Mr. Archibald Cuninghame, was appointed to proceed to England to urge the views of the Port Phillippians upon the Home Government. The Committee appointed to prepare a petition to Parliament included many names which in after years were prominent in the district. As usual, separation from Sydney was the cardinal point at which the delegate was to aim. In a population so feverish as that of Port Phillip it could not be expected that those who were fervent elsewhere would be calm.

In 1846 some Orangemen were bent upon commemorating the battle of the Boyne. The flags flying at their hotel aroused the ire of some Roman Catholics, who attacked the place. The arrival of a priest, bent upon peace-making, did not allay the riot. Shots were fired on both sides. The police and a small band of soldiers were called out; shops were ordered to be closed; and

[1] In 1879 (though the bridge was a good bridge and owing to sundry other channels of traffic was much less crowded than it had been in 1854 before railways and another bridge gave accommodation elsewhere), the inhabitants tolerated a proposal to borrow money in order to build a more expensive bridge.

to maintain quietness the soldiers camped for the night in one of the leading thoroughfares of the city.[1] In consequence of this riot a Bill was passed in Sydney to prohibit certain party processions. The irritated Orangemen built a place for themselves, and called it the Protestant Hall. Their antagonists built St. Patrick's Hall, but were adroit enough to obtain some subscriptions on the plea that the building was to be devoted to unsectarian purposes.[2]

A more ornamental addition to the charms of Melbourne was provided for at this period. Mr. Latrobe was sedulous to provide parks and gardens for future generations. His friend, Nicholson, one of the members for the district, carried an address in the Legislative Council in favour of a grant for the formation of the Botanical Garden at Melbourne.

The commercial crisis which had harassed Port Phillip as well as New South Wales, when representative institutions were conferred, had passed away, and men looked forward with the sanguine confidence of the earliest years of the settlement.

Nevertheless, if the Port Phillip settlers were procacious, they abounded in good qualities. It cannot be predicated that any other men would have been more prudent, or more modest, if placed in such exceptional circumstances. The finest plot of territory in Australia was placed in their hands. Climate, soil, natural productions, and quick response to cultivation poured from full springs the means of life, health, and wealth. It was hardly in human nature not to be made giddy. But the hearty good-will of the people, the overflowing hospitality of every host, ought to make a critic kind. Let an Englishman think that if he were to sally forth on horseback to ride from the Land's End to John o' Groat's House, and find every house however high, every cot however humble, open to him with hearty cheer, he would only realize the condition of the colony; and surely he will be inclined to pardon some exuberance even in the faults of such a people.

When Leichhardt's return from Port Essington elicited tribute in Sydney, Melbourne did not lag. A public meeting was held

[1] In Collins Street, between Queen Street and Elizabeth Street.

[2] Statement of Sir William à Beckett, the Chief Justice, who subscribed, and said that he had been deceived.

to testify admiration, and to collect funds. The Mayor (Dr. Palmer), Mr. Westgarth, Mr. McCombie, and others took part in the proceedings. In the adage, that the greater the truth the greater is the libel, there is at least so much truth as is shown by the wrath of those who are justly accused. If they could scorn a charge they would not writhe under it. Mr. Latrobe was fated to feel how dangerous is the path trodden by him who has to speak officially of others. He had been chosen in 1837 by Lord Melbourne's Ministry to report upon the application of Parliamentary funds to educate negroes in the West Indies. The same Ministry in 1839 appointed him Superintendent at Port Phillip. He was the friend of Washington Irving, and was himself an author. He was intellectually able, he was upright, honourable, sensitive, and amiable in every capacity, public or private. But he had one fatal failing. He was too kind-hearted to say No, if by so saying he inflicted pain. He was too impressible by able or urgent remonstrance, and yielded to others when it was necessary to make an example, and punish some misdoer whom intercessors wished to shield. He was so forgiving that he would smile at the eccentricity of phrases in which he was accused of corruption. Yet a man more pure or free from corrupt tendency did not exist. He incurred the dislike of the more ardent residents, because he was not combative enough against the New South Wales Government, and its so-called grasping officials. He had foresight and courage enough in 1844 to warn the Government in Sydney against the impolicy of recognizing claims of pastoral occupants to the fee simple, or to pre-emption of their lands.[1] He was "not prepared to advocate the issue of leases for a longer period." He submitted meekly to imputations that he had acted in a contrary manner. Seeking to avoid contention he allowed every petty wastrel to sling stones at him. He brought down a storm of abuse by writing a despatch, of which Earl Grey sanctioned the publication, and which expressed an opinion that Port Phillip "possessing within

[1] *Passim*, in his despatches. In 1851 he wrote that it was "the imperative duty of the Government to make large reserves for general uses in squatting districts. "I have never supposed that by so doing we could be setting aside any real or just claim of the original occupant of such lands for depasturing purposes only, his occupancy having hitherto been solely authorized and considered admissible for that particular purpose."

herself, for the present, neither the experience nor the means of prudently devising or properly executing many important works . . . she has had necessarily to wait a period of greater maturity, and more settled and manageable principles of internal government, before the application of these funds, though actually at command, could be undertaken." When the despatch became known the Town Council was moved to condemn Mr. Latrobe for incompetence and breaches of faith; and by nine votes against five the motion was carried.

In proportion as it was true that the Port Phillip community was not ripe for self-government, its procacity resented the statement of the truth. A public meeting was called to petition the Queen to remove the Superintendent. Rain did not abate the ardour of his enemies. "Caledonia, stern and wild," had reared her children to disregard inclemency of weather, though they were intolerant of the gentleness of Latrobe. McCombie, a Scotchman, the originator of the censure, presided, and the meeting was almost unanimous. Earl Grey was courteous, but Mr. Latrobe was not removed. McCombie wrote a long letter to Lord John Russell in support of the demand of the meeting. He afterwards became a member of the Legislative Council, and he wrote a 'History of Victoria' in 1858. Time had not then quenched his animosity.

"Had the Port Phillippians taken up arms to right themselves, they would not have been more blameable than the New England colonists; the only difference would have been this, that the money of the latter was demanded for Imperial objects, and that the revenues of Port Phillip were allowed to be taken by another settlement with the cognizance of the Imperial Government. Indeed, the case was twofold more cruel . . ."

The reader will give McCombie credit for power of imagination when he remembers that the revenues were divided upon an arithmetical basis decided to be just, and sanctioned by the Treasury in England. Maugre all attacks upon him, conscious of the purity of his motives, the amiable Latrobe toiled hard in his office, and rode distant journeys in performing his duties. He was in one sense unfortunate. He was not familiar with the public life of England. He could not cope with its faults, and

did not sympathize heartily with its ways. Conscious of his own honour, he trusted that time would justify his career. Too modest to vindicate his character when he was maligned, he would have shrunk with horror from any device to make his conduct appear better than it was. Such was the upright and kind-hearted Charles Joseph Latrobe. It has been seen that the community in which his lot was cast was eager and exacting, and when a fresh element of turbulence was precipitated into it by the discovery of gold, it might have been foretold that it would go hard with the Governor, unless surrounded by upright advisers to whom the service of their Queen and country was dearer than their own advancement.

In July 1845 Gipps summoned the Legislative Council. He congratulated them on reviving prosperity; regretted that he had not as yet received answers to some of their addresses forwarded to England, and "with entire sincerity and earnestness of purpose renewed the declaration of his anxious desire to concur with them in the enactment" of wholesome measures. It was known that the Lien on Wool Act would be disallowed in England, and Wentworth at once obtained a Committee to inquire into its working. Gipps presented an extract from a despatch from Lord Stanley animadverting upon it as

"irreconcileably opposed to the principles of legislation immemorially recognized in this country respecting the alienation or pledging of things moveable;" . . . "The disasters of New South Wales will ere long have passed away, but there will remain on the colonial statute book a law expressly authorizing transactions which the law of England regards as affording the conclusive indications of fraud. It is a law which will place society at the mercy of any dishonest borrower, and which will stimulate the speculative spirit, which it is so important to discourage."

The Crown could disallow the Acts assented to by Governors within two years of the receipt of the official transcript, and unless intelligence of its local repeal should be received in England before July 1846, it would then be disallowed by the Queen. The witnesses examined by Wentworth — bankers, lawyers, merchants, and settlers—bore unanimous testimony to the usefulness of the Act. Wentworth traversed, in the report,

Lord Stanley's arguments. The assumption that the alienation and pledging of things moveable were identical was a fallacy.

"The possession of things moveable by the alienor after alienation is deemed a conclusive badge of fraud only because after such an act the possession and the right of property are incompatible. Hence it is that such possession is deemed in law fraudulent and void. The possession, however, of moveable property by a mortgagor may be, and most frequently is, perfectly consistent with the provisions of the deed; and, if so, raises no such presumption, and entails no such consequence."

Lord Stanley's law was inaccurate. Similar mortgages of moveables had been upheld by a long series of decisions in Westminster, and in the colony, long before the introduction of the Act. The only innovations were the giving priority to the securities, according to date of registration, and exempting the mortgaged live stock from the operation of the Colonial Insolvent Law. The registration effectually barred the way to fraud, and the tendency of the Act was the reverse of Lord Stanley's deductions. The mortgaging of wool "on the backs of the sheep" was an innovation on English law, but registration prevented abuse.

A witness, Hastings Elwin, once Attorney-General at Antigua, and now a nominee of Gipps, had stated that it was familiar to him that in the West Indies it had been common to mortgage the negroes. Such "mortgages had been recognized in the Court of Chancery in England over and over again. In some of the islands, Antigua for instance, the negroes are real estate, and are literally walking freeholds, subject to all incidents of freehold property; in other islands they are mere chattels." A retort upon Lord Stanley, the anti-slavery champion, was unavoidable. Wentworth declared that if the English law had sanctioned mortgaging of human beings, it could not be nice about the mortgage of sheep or cattle, and that the Act ought to be made permanent. He regretted that baseless theoretical surmises should endanger a matter of purely domestic legislation, and recommended that a Bill should be brought in to repeal the existing Act, and to consolidate the useful clauses of the original, and a short amending Act of 1844, in a new Act to take effect from the date of the repeal. His advice was followed at last and a law which arrested ruin, protected capital, and encouraged

labour in an imminent crisis, was permanently retained in the statute book[1] by means of temporary renewals, until the most obstinate could no longer be blind to its benefits.

In default of replies from Lord Stanley to some of their addresses the Council did not handle some burning questions Mr. Lowe had become an elected member, and plunged into opposition. In November, 1844, a weekly newspaper, the 'Atlas,' had been established, and it was made by him the vehicle for bitter attacks upon Gipps. Leading articles and political squibs dropped from his pen tipped with venom.

On the Queen's birthday in May, when, as was customary, a *levée* was held by the Governor, a savage anticipatory satire, of which the authorship was undoubted, sneered at the cringing baseness of any who would flock thither. An equally savage poetic lamentation was poured out[2] when the first proved ineffectual,

[1] Wentworth did not triumph speedily. Even in August 1850 he had to induce the Legislative Council to pass cogent argumentative resolutions for transmission to England with a renewed Act then passed. The last resolution was "that the non-renewal of this Act would occasion a monetary panic, which would lead to the ruin of hundreds of solvent stock-holders as well as their creditors, and spread dismay and confusion throughout the entire colony." Earl Grey had in 1848 written that the temporary allowance of the Act in 1845 was made "with no intention of making it perpetual. I have therefore to recommend you now to allow it to expire, and should not approve of the passing of any fresh Act on the same principles and intended to promote similar objects."

[2] "* * * * * *
Thank him for what his harpies have not reft;
Thank him for what prerogative has left:
Thank him for revenue he dares not take;
Thank him—for laws he yet has spared to break:
Thank him—for lands which, innocent of rent,
Yield not his vampires twenty-five per cent.
Thank for the Gordian knot his hand untied,
The 'solemn compact' solemnly denied,
And say, as prostrate at his throne ye fall,
Accept our thanks;—thou hast not taken all.
* * * * * *"
'Atlas,' 24th May, 1845.

"Bind ye with fetters? Cobwebs were too strong
To chain a craven *made* to bend to wrong
* * * * * *
Bribe ye with treasure? Tyrant, spare thy store:
A bow can bribe:—and what can treasure more?

and the *levée* was numerously attended. The judicious might grieve to see great talents misapplied; but the majority were not judicious, and the sarcasms of the 'Atlas' were quoted by many. For a time they were a power. The recent acquisition of the franchise, the vital questions which were mooted in the Council, the troublous state of the colony, combined to excite the attention of the people in a manner unintelligible to residents in older communities. Lang, as editor, at various times had to the extent of his ability been as bitter and unscrupulous as Lowe, but his papers wanted polish, and his unsupported statements commanded no belief. But the bulk of the people were not inclined to be disloyal. The arrogance of the 'Atlas' was condemned so strongly by public opinion that Dr. Bland and Dr. Lang took occasion to publish their reasons for attending the *levée*. The reason for the large attendance alleged by the first, was "a conceived necessity of not appearing to identify themselves with the writings of the 'Atlas' on the subject; a sense of disgust at the rude dictatorial insolence of a self-created autocrat of yesterday, scarcely emancipated from the trappings, barely metamorphosed, and that before the eyes of the whole colony, from the form of a sleek, silken, crouching, fawning courtier."

Dr. Lang wrote at great length to show that his attendance at the *levée* was "symbolical." The 'Atlas' replied, but it was generally thought to have failed. From that date Mr. Lowe lost respect among the educated classes, and turned elsewhere for support. Acheron might furnish myrmidons denied in upper regions.

In the previous session the appointment of a Parliamentary agent had been resolved upon. On the 17th September, 1844, the thanks of the Council had been voted to Charles Buller, M.P., for the distinguished services he had rendered, and to the Honourable Francis Scott, M.P., "for his masterly exposition of

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Where are they now, the voluble, the loud
Against thy rule? They saw thy face and bowed—
Forgot their wrongs, their ruin, their despair—
Saw but thy shrine and flocked to worship there.
* * * * * *
Ye might have checked—ye bowed before his car—
And it will crush ye—like the worms ye are."

'Atlas,' 31st May, 1845.

the case of the Australian squatters." So popular in those days was friendliness to squatters both in and out of the Council, that on the following day it was determined to appoint Mr. Scott to represent the colony in the House of Commons and elsewhere, and to request the Governor to place £500 on the colonial estimates as an acknowledgment of his services, and to defray incidental expenses.[1] These resolutions had been duly forwarded by Gipps to England for consideration by the Secretary of State. The Speaker, Mr. Macleay, wrote immediately to Mr. Scott to apprise him of the appointment, and to describe the condition and requirements of the colony. The land and other grievances were the burden of his despatch. Though Gipps had made no objection to the novel appointment of a Parliamentary Agent, and Lord Stanley approved of his reticence, the latter saw difficulties. Mr. Scott had interviews with him, and in replying to Macleay, declared that being "uncertain of the amount of responsibility which acceptance of the office would impose upon him," he would meantime do his best voluntarily, and he did in fact accompany deputations to the Colonial Office, and in various ways aid his clients. It was not until September, 1845, that Lord Stanley informed Gipps that without any abstract objection to the appointment itself, he must demur to its "being made by a mere resolution of the Council. Her Majesty's Government can be no party to the recognition or to the payment of an agent for the colony, unless he be appointed as in all other colonies by a local ordinance, assented to by the Governor, and transmitted for the Queen's confirmation or disallowance." Moreover, the undertaking by a member of the House of Commons to represent the colony "in that House" would be inconsistent with his duties. In one sense a member represented his constituents, in another and larger sense he represented the Commons of the United Kingdom and of all its colonial dependencies. The Queen could not be advised to sanction

[1] Mr. Charles Buller, the old friend of Wentworth and his party, would have been offered the appointment, if his opinions on the land question had agreed with those current in New South Wales. Wentworth and others said that Buller's adherence to the Wakefield system was an objection which could not be overcome. In 1845 Mr. Scott's father, Lord Polwarth, supported the efforts of the colonists in opposing Sir G. Gipps' Squatting Regulations of 1844.

a resolution, "the terms of which would appear to suppose and to require a departure by any member of the House of Commons from the duties which in that capacity he is bound to discharge." Nor did Lord Stanley stay his hand here. The Legislative Council had appointed a Committee of fourteen members to correspond with Mr. Scott, and only one of the Committee was a non-elective member. Such a Committee ought fairly to represent the whole House. Moreover, he could not concur with the appointment of any Committee with authority to sit and act during a prorogation or pending a dissolution of the House: "permanent Committees meeting throughout every recess, and debating either publicly or privately at their discretion, must ripen in New South Wales into an institution subversive of almost every other authority." Gipps might sanction no ordinance infringing the advice thus given; to one conforming to it and limited to three years he might assent. The objections of Lord Stanley were of little practical importance, however justified on constitutional grounds. Mr. Scott, by speeches in Parliament, by addresses in the provinces, and promoting emigration, continued to earn the thanks of the colonists.[1]

The session of 1845 was less distinguished by conflict with the Governor than its predecessors. Answers to some addresses of the Council had not been received at its close, and were anxiously expected. Mr. Cowper obtained a return of levies for quit-rents made upon stock running on Crown lands, and carried an address praying the Governor to suspend the issue of warrants for distress pending the reply from the Secretary of State on the Crown Lands Grievance Report. Gipps greatly regretted that he could not consistently with his sense of public duty give directions which might seem to imply on his part a doubt of the validity of debts owing to the Crown.

[1] In November 1848, as a member of the Colonization Society established to encourage systematic emigration to the British Colonies, Mr. Scott addressed an audience at Leeds. On the Committee of the Society were many members of Parliament, of whom Mr. Scott was one. They presented a memorial (printed by J. Murray, 1848), to Lord John Russell, which declared that "the subject of colonization must ere long be undertaken by the State as a question of urgent political necessity, and contributions by Parliament will recommend themselves not more on the grounds of public expediency than financial economy."

The Colonial Office had discovered an error in a Bill for the custody of lunatics, passed by the Council in 1843, and assented to by Gipps. Two out of seven visitors were to be appointed by the Legislative Council. Lord Stanley took the earliest opportunity (October, 1844)

"of recording the conviction of the Government that usurpations of this kind, by the Legislature, of administrative functions must be firmly opposed. Large experience has shown the tendency of such encroachments to multiply themselves, and to mature themselves into a system at once indefensible, and in the highest degree injurious to the public interests. The principle which separates Executive and Legislative duties is not less important in checking the unconstitutional claims of the Legislature, than in repressing the unconstitutional pretensions of the Government. The Legislature is really irresponsible, at least to any human tribunal; and no greater abuse can exist than that the nomination to public employment, and other similar acts, should be done by persons who cannot be called to account either in their individual or collective capacity for the abuse of any such power."

Gipps was instructed to propose the required amendment, pending the fate of which the Queen's decision on the original Act would be suspended. The Council had the good sense to accept the proposal, notwithstanding the caustic language in which Lord Stanley conveyed it.

Mr. Lowe, besides joining in general opposition to the Governor, followed up his previous attempts to coerce the Government to make up for the defalcations of the late Registrar-General. Mr. Cowper had brought in a Bill to transfer the duties of Registrar-General to the Registrar of the Supreme Court, and it was hotly debated. The Governor, when it was passed, recommended numerous amendments in it, under his constitutional powers, on the 6th November. On the same day Mr. Lowe moved an address about the recent defalcations, but during the debate the House was counted out. On the 11th November, on the consideration of the Governor's amendments, Lowe moved that the Council disagree to them, and was defeated by one vote in a thin House. Not strong enough to defeat the Government by votes, the minority, by leaving the House, left it quorumless, and the Bill was thus stopped. Two days afterwards Gipps prorogued the Council in a conciliatory speech, dwelling only on

points which enabled him to speak smooth words. He asserted "with confidence, and with some degree he trusted of honest exultation, that in no part of the wide dominions of the British Crown, at no period in English history was a colony planted and brought to maturity without expense of any sort to the parent State, surpassing in energy, wealth, and character, that which has silently grown up in the course of the last ten years, within your southern boundary—the settlement of Port Phillip."

Nicholson moved for a Select Committee, which reported strongly in favour of restoring immigration. With reviving enterprise a scarcity of labour was again retarding enterprise. Wages had risen. The Committee recommended the raising of a loan of half a million sterling in order to obviate the necessity for an immediate exportation of capital. They also concurred with their predecessors of various years in advocating a "remission of purchase-money of land granted to immigrants defraying the cost of their own passages or that of their servants."

Mrs. Chisholm, the wife of Captain Chisholm (late of the East India Company's army), gave evidence. She devoted her attention almost exclusively at that time, and long afterwards, in promoting immigration and the comfort of immigrants. She travelled with groups of families to the interior, assisting them in hiring their services, and had to encounter the customary deprivations and inconveniences of the country. She told the Committee that even in 1842, when wages were at the lowest, an Irish family which had obtained less than £20 in clear wages in Ireland, received £100 in New South Wales.

Early in the year 1846, Wentworth's friends determined to pay him a marked compliment. On the 26th January, the anniversary of the foundation of the colony, they invited him to a banquet in the Hall of the Sydney College. Leading colonists attended in large numbers to do him honour, and Mr. Lowe heaped eloquent praise upon his head. Dr. Nicholson vied with him, and all the speakers denounced the Government of Downing Street. Mr. Lowe claimed a right for colonists to be represented in Parliament. If this were granted "then indeed would England and her colonies be knit in an iron confederacy supreme in her strength." None doubted his ability, but some suspected that a hope of becoming a representative explained his fervour.

It was known among the friends of Gipps that he desired to be relieved from the strain on his failing health which the cares of Government entailed. Already he had outstaid the ordinary term. In March 1846, tidings reached the colony that the Government had fixed upon Sir Charles Fitz Roy, then Governor of Antigua, as successor to Gipps, and that in October 1845, Sir Charles bade farewell to the Council of that colony. Gipps called the Council together in May 1846, congratulating them on the general improvement in affairs. His term of office was confessedly approaching its end, and he could not address them,

"as I now in all probability do, for the last time without feeling awakened in me a grateful recollection of the important changes which, under my government, have taken place in the social and moral as well as the political condition of New South Wales: changes which will, I trust, be dwelt upon with pride and satisfaction by you and your descendants, long after the memory shall have passed away of less important events connected with the history of our times."

The reply to the speech was threatening. Deas Thomson had been on the Committee which prepared it, but a majority supported Wentworth, who was also a member, and whose hand was visible in the Address. It admitted that the affairs of the colony were in a more healthy state than they had been for some time, but thought there could be "no guarantee that this prosperity will be permanent, until the administration of the public lands be placed upon a proper basis." Anxiety for replies to addresses sent to England remained "unabated, nor can the deep interest which we feel in these questions cease, until they are settled in a satisfactory manner."

In speaking on the Address, Wentworth, Windeyer, Lang, and others animadverted strongly on the Governor's conduct, and denied him any credit for the improved condition of affairs. Wentworth signalized himself as one who could forget antipathies, by giving a notice of motion to raise the salaries of the Speaker and other functionaries of the Council. Macleay, before calling on him to move it, thanked the House for its uniform conduct towards him, but announced that his age, eighty years, had determined him to retire in spite of solicitations to the contrary. For a brief period of the session, if it suited the convenience of the House, he would occupy the chair, but only

on the distinct understanding that no increase should be made to his salary. If Wentworth's motion to raise the salary from £750 to £1500 should be carried in the proposed form, making it applicable to Macleay, he would be induced instantly to resign. Wentworth amended his motion, making it to apply to the Speakership only in a succeeding session, and spoke in feeling terms of Macleay's unimpeachable impartiality and integrity, declaring that regret at his resignation would better come from him than from others, as he had been conspicuous in opposing the original election. Lowe and others opposed the increase of the Speaker's salary, and the motion was withdrawn. In the following week the old man, so honoured by the House, and so complimented by the eloquent leader of many onslaughts upon him in former days, retired from the Chair, proffering his thanks for the indulgence "extended during his Speakership, and for Wentworth's open, manly, courteous, and generous" tribute to him. Nicholson, proposed by Mr. Cowper and seconded by Mr. Murray, was thereupon unanimously elected Speaker.

But amenity was not to be the order of the day. Mr. Lowe's influence in the House and in the country was small, but his speeches were read, and he inveighed bitterly against Lord Stanley's despatch about the appointment of Mr. Scott as Parliamentary agent. "If that Council should choose to set aside the Constitutional Act, what was that to Lord Stanley? It was the most arbitrary and oppressive invasion of the rights of a legislative body that he had ever heard of." These wild words, applied to a motion by Mr. Cowper to re-appoint the Committee of Correspondence with Mr. Scott, aroused no sympathy, and Mr. Cowper withdrew his motion. The long-expected answers to addresses to Her Majesty were forthwith laid before the Council by Gipps, with copies of his despatches transmitting the addresses to England. Lord Stanley was brief. As to the request that Her Majesty would not withhold her assent to an Imperial measure submitting the lands and their proceeds to the local legislature, it was not convenient to state the course to be pursued in so improbable a contingency. As to the abolished offices, Lord Stanley endeavoured to soothe the Governor and the Council in words already quoted. His reply

on the General Grievances has also been told in connection with the Address. Neither as to conceding abstract and vague stipulations respecting responsible government, nor as to claims on the Imperial Treasury for asserted debts, which Her Majesty was "advised were not really due in law or justice," could anything be hoped. To a tribunal for impeachment, and the independence of Judges, if practicable there was no objection. As to the address on judicial expenditure (involving the Casual revenue question), Lord Stanley was curt. Her Majesty was convinced that the Council will either make or withhold any addition to the sum appropriated by Parliament to the administration of justice, according as they shall think that the exigencies of that most important branch of the public service require it, or the reverse. Her Majesty, however, is advised by the highest legal authority to which access can be had that the words contained in the 34th clause of the Constitutional Act of the colony, namely, the words "taxes, duties, rates and imposts levied on Her Majesty's subjects,"[1] do not "extend to fines and penalties inflicted in the Courts of Justice in New South Wales, and therefore that these latter are not at the disposal of the local legislature of the colony." Matters were soon brought to a crisis. The Governor sent down a Bill to continue for one year the Act to restrain the unauthorized occupation of Crown lands, and to provide the means of defraying the expense of a Border Police. Deas Thomson moved on the 3rd June that the Bill be read a first time. He urged that a renewal for one year only need not excite opposition. The leading newspaper, the 'Sydney Morning Herald,' had declared on the day before, that the struggle was one between prerogative and liberty, and that the colony looked with confidence to its representatives. Windeyer moved an address to acquaint his Excellency respectfully that the Council could not entertain the Bill :—

[1] § xxxiv. . . . "with the deductions and subject to the provisions hereinafter contained, the whole of Her Majesty's revenue within the said colony arising from taxes, duties, rates and imposts levied on Her Majesty's subjects within the said colony, shall be appropriated to the public service within the said colony by ordinances to be for that purpose enacted by the Governor with the advice and consent of the Legislative Council of the said colony, and in no other manner. . . ." Act 5 and 6 Vict. cap. 76.

"1st. Because we are not disposed to continue summary powers which have been used to support a claim to tax by prerogative alone, the validity of which we, as the representatives of the people, can never recognize. 2ndly. Because your Excellency has repeatedly asserted that Her Majesty is the absolute owner of the waste lands of this territory, and that the prerogative is sufficient for their management —propositions, which, if true, render the interference of this Council unnecessary. 3rdly. Because we do not feel justified in imposing any peculiar tax upon the squatters, so long as your Excellency claims in the name of Her Majesty, a right to tax them to any extent you may think proper. 4thly. Because the powers conferred by the Acts (2 Vict. No. 27, and 5 Vict. No. 1) on the Commissioners of Crown lands are most arbitrary and unconstitutional. 5thly. Because these Acts were passed with the understanding that the license fee should not be increased—an understanding which has been disregarded by your Excellency in the Regulations of April the 2nd, 1844, and in subsequent despatches and regulations. 6thly. Because your Excellency's new Regulations were made without consulting this Council, and have been carried out in spite of its most earnest remonstrance. Anxious, however, to extend to the squatting districts the means of securing peace and order, and to confer upon them some portion of those civil institutions from which your Excellency has seen fit so long to debar them, this Council is ready to co-operate with your Excellency in organizing and supporting for those districts an efficient police, and in establishing throughout them courts of petty sessions, with the understanding that the police so to be constituted, shall not be employed, directly or indirectly, in collecting the revenue which your Excellency claims to derive from the waste lands, or in enforcing in any other manner the alleged rights of the Crown."

Windeyer acknowledged the "great skill and address" with which Deas Thomson had striven to disarm the temporary measure of its repulsive character; but declared war to the knife on principle. Lang, Lowe, and others followed, and the debate was adjourned. Cowper, Macarthur, and Wentworth resumed the battle on the following day. Wentworth, in a speech of more than two hours' duration, assailed the Government on details and on principles.

"Could they trust it? It had taken treble the money it ought to have done under the Act before them; it had appropriated it contrary to the provisions of that Act. In the face of that Council, in

the face of recorded documents, in the face of public recollection, fresh and almost universal, the Government had denied—did still deny—the promises that had been made. If in the face of these things they could be guilty of the insufferable baseness of passing that measure, well would they deserve that the leprosy of that beautiful code of tender mercies contained in the Squatting Regulations of 1844, and the recommendations by which they were accompanied, should cling to them and their posterity for ever."

Deas Thomson courteously but vainly replied, and Windeyer's amendment was carried by nineteen votes against ten. No elective member voted with the Government. Meantime Gipps' health had waned; his medical advisers recommended total cessation of work long before he ceased to labour. High personal character under such circumstances ensured him sympathy even amongst those who supported Wentworth. Gipps, knowing that his successor, Sir C. Fitz Roy, would soon arrive, at length yielded to his advisers, and prepared to depart. Ill health could not bow down his spirit; and the same imperious characteristics which issued so untimely his Regulations in 1844, ruled him now. The address rejecting the Border Police Bill was presented to him on the 9th June, by Nicholson the Speaker, Windeyer, and another member. The Speaker informed the Council that his Excellency had been pleased to say that "he had no reply to give to the address." Called on to repeat exactly the words of Gipps, he said that "to the best of his recollection" they were: "Mr. Speaker, I am happy to say that this is an address which requires no reply, nor do I intend to give it any. I thought it right to give the Council the opportunity of passing the Bill if they thought fit. Perhaps I thought they would not pass it, and they have not; but I do not see why, on that account, responsibility should be cast on me." Windeyer and the other member vouched the accuracy of the Speaker's recollection, and Windeyer moved that the answer be entered on the minutes. The motion was temperately opposed by Deas Thomson, and was withdrawn, but its words remained on the records as having been moved.

At this time tidings of the changes in Sir Robert Peel's Ministry consequent on his resolution to abandon the duties on corn had reached the colony, and the restless Windeyer thought

it a fit time to thank Her Majesty for the change she had made "in the head of the Colonial Department of her Government" —(Lord Stanley having resigned of his own free will rather than accede to Peel's proposals). An amendment was carried, with Windeyer's consent, praying for "reform in the system upon which the Colonial Department was administered." Strong language was used on this occasion.

Lowe had, on the 22nd May, brought before the Council an address praying the Queen to relieve the sufferers from the defalcations of the defaulting Registrar-General; but though their wrongs were in his mouth, thoughts of Gipps were in his heart. Deas Thomson having suggested that it could hardly be expected that the British taxpayers should make good the defalcations, Lowe said:

"If the Government of Great Britain would insist upon thrusting a Governor on the colony when they were quite ready to govern themselves; if they would allow him to appoint officers and fix their salaries, . . the responsibility rested with them alone. . . So long as they would force governments all over the world on communities who did not want, who had rather be without them, without giving them any part in the local government of their own affairs, it was only right, it was only just, that they should pay for all frauds which their own appointed officers committed."

The unanimity of the elected members in rejecting the Border Police Bill induced Lowe to take up the subject again. The day after the Governor's reply was reported by the Speaker, Lowe gave notice of resolutions asserting—

1. The undoubted right of the Council to appropriate by ordinance in the usual manner, the revenues, "subject to the Schedules A, B, and C to the Constitution Act."
2. That the Governor had, without authority, appropriated certain sums "according to his own pleasure."
3. That the Governor's claims would place a large sum at his disposal.
4. That an Address be prepared praying Her Majesty to "direct the officer administering the government of the colony to respect the constitutional rights of the Council."
5. That the resolutions be presented to the Governor.

On the following day (11th June), in moving the resolutions, Lowe charged the Government with—

"Wilfully and of malice aforethought murdering the liberties of the colony;" "rather than give up the principle he would prefer that the whole community should be put to inconvenience, that the whole machinery of Government should be deranged—that matters should be reduced for a time to a state of anarchy—rather than submit to the indignity which was now attempted to be forced upon them. . . . The members of the House were not children, to be dealt with as the Governor would deal with them, nor were they to be deceived by miserable subterfuges."

Deas Thomson, justifying the appropriation of certain toll-money in repairs of roads, under a local law, coolly replied that he "preferred the opinions of the law officers, the sworn advisers of the Crown, to those expressed by any individual member or members of the Council in course of debate—opinions given for no party or political purpose, but according to their oaths as the advisers of the Crown." The first resolution was passed without a division. But members knew that Gipps was dangerously ill, and some of them shrunk from adopting the bitter language of the former guest of his hearth. Wentworth moved as an amendment on the remaining resolutions, that leave be given to introduce a "Bill to repeal so much of all local ordinances now in existence as assumes to vest the appropriation of the ordinary revenue elsewhere than in the Legislative Council." If the Bill were not assented to, Wentworth would adopt the resolutions. The Bill was read a first time on the spot. On the day when this last public arraignment of Gipps occurred, Wentworth gave notice that he would, on the morrow, move an adjournment of the House to the 21st July—a course which would deprive Gipps and Deas Thomson of communication with the public through a legislative vehicle during Gipps' stay, and would, nevertheless, leave members of the House busy at their labours in Committee, at the discretion of the House itself. Only four measures had been passed—a Bill to replace a jury-law about to expire at the end of June, and three others introduced by the Government.

Wentworth, in moving the adjournment, declared that he for one would not consent to pass the estimates "after the insulting

answer given the other day to the Speaker." A short session such as his Excellency contemplated was out of the question, and he really brought forward his motion "to avoid collision, as well as from a consideration of the declining state of the Governor's health." Deas Thomson deprecated the motion as injurious. The session ought to be concluded before Sir Charles Fitz Roy's arrival, who would otherwise be called upon to exercise his functions without having had time for inquiry. Wentworth had alluded to the Governor's language as insulting, but was not the address from the House insulting? He "hoped that the wish to spare the health of his Excellency was a presage of better feeling than had hitherto characterized remarks about the Governor, who was well known, by all acquainted with him, to have laboured, even to the injury of his health, for the sole purpose of benefiting the colony under his Government." By eighteen votes against six the adjournment was resolved upon, amidst public approval. But Gipps was prompt as well as resolute. Adjournment was within their functions, but prorogation was within his. On the following day members were astounded by a proclamation proroguing the Council, not to the 21st July selected by themselves, but to the 28th August, before which date Gipps hoped that Sir Charles Fitz Roy might obtain time to scan the state of affairs. The 'Sydney Morning Herald' accepted the prorogation as proving that Gipps agreed with the Council, that nothing should be done till Sir Charles Fitz Roy should have arrived. The 'Atlas,' which reflected the mind of Lowe, declared that it was the only act of revenge in the power of Gipps, and that no sound reason could be given for it. Both papers reviewed the Governor's career unfavourably: the 'Atlas' with an acerbity which induced many persons to sympathize with him.

On the 30th June, 1846, Gipps republished Crown Lands Occupations Regulations of the previous July; called upon holders of stations to take out their separate licenses for each run; and notified in the 'Gazette' that unlicensed persons would be intruders. The 'Herald' designated this notice as the Governor's last blow at the squatters, with whom all colonists had now made common cause. The channel for communication of his views by message to the Council being closed, Gipps

resorted to the columns of the 'Gazette' to publish documents "placed on record in the office of the Colonial Secretary on the 25th June." From the resolution adopted by the Council on 11th June he felt it necessary to record his dissent. It should, in his opinion, after the words "subject to the three Schedules A, B, and C," have gone on to say, "and consistently with the other provisions, conditions, and intentions of the Constitutional Act." District Councils were intended to be established; tolls, rates, and assessments were to be collected and expended under their authority.

"Believing such to be the intention of the Constitutional Act, and believing it not to be the intention of that Act that monies raised by turnpike tolls should be appropriated by Acts or Ordinances of the Governor and Legislative Council, I cannot assent to the doctrine so comprehensively attempted to be laid down in the resolution, and I must consider it to be the duty of the Governor of this colony, so long as the clauses relating to District Councils remain unrepealed, to withhold his assent from any Act passed by the Legislative Council declaring or implying that the Council has a right to appropriate monies arising from turnpike tolls."

As to the fees taken in the Courts of Requests and the Insolvent Courts, he saw no reason why local legislation should not control and apply them. He had no desire for the sole power of appropriating them; but had he not used them in the beginning of 1844, he must have closed the Insolvent and the Requests Courts, and he preferred exercising the power which he was assured he lawfully possessed, to shutting up the Courts, which he knew would be prejudicial to the colony. By rejecting the second resolution (proposed on the 11th) the Council had, virtually, admitted the previous application of the fees to be lawful. It was not necessary to enter on the question whether, if an Act had been passed vesting the appropriation in the Governor and Council, he would have assented to it; "it may be sufficient for my present purpose to observe that had such an Act contained no permanent provision for the support of the Courts, I might possibly have withheld from it my assent." He published, simultaneously, his own despatch (3rd February, 1845) announcing the steps he had taken after the Council (in November 1844) threw out his Bills to legalize payments to witnesses, and to declare rights as to receiving fees. He was

fortified by consulting the Judges, and by the law officers. Lord Stanley had entirely concurred in his policy (5th August, 1845). His second memorandum dealt with the alleged insulting answer he had made to the Speaker. He thought it right before leaving the colony to place on record the words he had used. They were—

"Mr. Speaker, I am happy in thinking that this address does not require any answer (meaning of course any written or formal answer), and it is not my intention to make any. I thought it right to give the Council an opportunity of renewing the Act, though I did not much expect they would renew it. I have given them the opportunity and they have refused to renew it. Whatever may be the consequences to the colony of their rejection of it, those consequences will rest with them."

It was not merely to promulgate a version varying so slightly from that of the Speaker that Gipps now printed, and caused to be circulated, his own. He made known why he

"did not deem it necessary or proper, to give a written or formal reply to the address of the Council. Passing by the studied discourtesy of the address, there were expressions in it, which, had I returned any formal answer, I must have expressly declared to be untrue. I will refer only to the following: 'Because we are not disposed to continue summary powers which have been used to support a claim to tax, by prerogative alone, the validity of which we, as the representatives of the people, can never recognize.' No constitutional lawyer whose opinion is entitled to any respect, has, I believe, ever asserted, that to take a payment for the use of Crown land, is to impose a tax. The contrary has been maintained down to the most recent times, by lawyers of the highest eminence in England, by the British Government, and by the British Parliament. I have never to my knowledge claimed for the Crown any right or power, which is not recognized by the Act of Parliament expressly passed for the Government of New South Wales, or which will not, as I at least confidently expect, be confirmed by the Act now under the consideration of Parliament, to regulate the administration of the public lands in the Australian colonies."

Thus gallantly and unwisely did Gipps, while his frame was wasting with disease, speak the words of confidence and defiance. It was the old story of the shield and the travellers. Gipps had not intended to strain the imposition of the license fee so as to

substitute it for taxation. But an arbitrary power to raise it, if submitted to, would have made a Governor supreme. The shilling of one year might be the pound sterling of the next. The warmest friends of Gipps must have sympathized with the Opposition, so far as it rested on this principle. They who most abhorred Lowe's tergiversation, or shrunk from what they called Wentworth's coarse eloquence, must have bitterly regretted that the armour of Gipps was so open to be pierced. On the 11th July he held a parting *levée*. An address signed by 5755 persons was presented, regretting his retirement, and bearing witness to his talent, industry, and impartiality, which they declared "the candid historian would confirm." Gipps thanked them from his heart for this proof of the esteem of the great body of the people. "And prompted by the inward consciousness of that heart, I will, gentlemen, boldly say that they have done me only justice, in testifying that I have laboured to the best of my ability to advance the true interests of this land—interests which, I most conscientiously believe, must, for ages yet to come, be inseparably connected with those of the parent State." In touching language he bade them farewell, and prayed that in showering down on them His choicest blessings the Almighty would dispose their hearts to retain a favourable recollection of himself and his wife, who had been affectionately mentioned in the address. Other addresses had been received previously. The *levée* was held. Most of those who attended it accompanied Gipps to the wharf, through a crowd which cheered him occasionally. Various vessels followed his ship as far as they could, and the curtain closed on the career of the last Governor of New South Wales who exercised personal power. Bishop Broughton availed himself of Gipps' retirement to close his political career. He solicited permission to resign his seat in the Executive Council. Gipps, in forwarding his application, expressed his sense of the great loss to the country on questions of general policy which the Bishop's absence would involve, and his own gratitude for the firm and unflinching manner in which the Bishop had advised him on many important occasions. Thenceforward political struggles were to be those of parties rather than of men. The phalanx of discipline was to supersede the prowess of the chief. Achilles and Hector

had had their day, and were to become mythical. Not Numa now, but a senate was to prompt legislation. A candid historian must admit the high personal worth and the nobility of the aims of Gipps, but must ascribe to his imperious presumption in issuing, without due inquiry and without securing reasonable approval, his Squatting Regulations of 1844, the united opposition of the time, and in some degree the pernicious result which, by excluding Crown lands from sale when required for settlement, barred the public from them and engendered class hatred. By the vigour of the rebound in their favour the squatters and their friends secured legal rights under the Orders in Council of 1847, which were incompatible with general progress. Weak Governments strove to remedy legislative blunders by lawless executive Acts. Had Gipps lived a little longer his piercing vision might have foreseen the woes to come, and the Colonial Office might have been saved from the blunders of Earl Grey. His voyage was protracted, and he suffered in health. For a brief period he was consulted by the Government about Australian affairs, and was appointed to a post in the Royal Engineer Department in London. He was about to leave Canterbury to enter on his duties, had spent a cheerful day with a sister, retired to his room, reclined on a sofa, and died suddenly,[1] of disease of the heart, in February 1847. There was little general legislation during the session which Gipps so abruptly terminated. He had laid before the Council, in May, a despatch from Lord Stanley enclosing a copy of Mr. Hope's Bill (to amend the Crown Land Sales Act, 5 and 6 Vict. cap 36), already described as having failed to proceed beyond a first reading; and Mr. Charles Cowper, on the last sitting day, obtained a Select Committee to consider the Bill and the despatch. The powers of the Crown were in no way diminished by the projects of the Bill, and the names of Wentworth, Windeyer, Lowe, Robinson, and Cowper, in a Committee of seven members, were ominous of the result of its labours. Ample returns of the occupation of

[1] He was buried in the south aisle of Canterbury Cathedral. He and his friend Bishop Broughton had been school-mates at Canterbury; had married there: had met in later life, the one as Bishop, the other as Governor, in New South Wales. The Bishop was in England in 1853, and died also at Canterbury: a monument to his memory was placed in Canterbury Cathedral near that of Gipps.

Crown lands were laid on the table, in which the accounts for Port Phillip were, as usual, separately kept. The magnitude of the interest which Gipps had so unwarily slighted, was exhibited in the returns of live stock on the 1st January, 1846.

	CATTLE.	SHEEP.
Within the boundaries of location in the Sydney or Middle District there were	417,000	1,891,000
In the squatting districts there were	698,000	2,518,000
In Port Phillip or Southern District the numbers were—Within the boundaries	30,000	351,000
Without the boundaries	200,973	1,430,914

Gipps himself wrote careful despatches urging with keen foresight that nothing should be done by Mr. Hope's or any other Bill to shackle the local executive in continuing or discontinuing the distinction between the lands within, and those without, the boundaries of location. With resolution amounting to obstinacy he advocated some of the provisions, which would have the ominous effect of perpetuating struggles between the executive and the representatives as to taxation. They would, he thought, "aid the Government." It must not be supposed that the colonists, who eagerly applauded Wentworth and listened to Lowe's diatribes on the British Government, had ulterior or disloyal views. They thought only of the evil pressing on themselves. Dr. Lang had a certain but small following of violent spirits such as most communities can furnish. In them the idea of liberty has extinguished the sense of that for which liberty exists, and is useful. They bedaub their goddess till her beauty disappears.

While the last days of Gipps' career were running in Sydney, echoes borne from the battles which culminated at Sobraon aroused the affectionate pride of the colonists, whose Southern hearts throbbed as warmly for the success of their country as any in the North. A striking contrast was shown in Ireland. The 'Nation' newspaper and its supporters made the most of every slight check reported to have been suffered by our armies. Nor was the animosity a casual passion. Long years afterwards, when Charles G. Duffy had emigrated to Victoria, had been taken by the hand by a countryman

(O'Shanassy), and placed in a Ministry, when again there was mutiny in India, the same spirit broke out with well-sustained force. Mr. O'Shanassy wished the Governor's speech to Parliament to refer in loyal terms to the achievements of the army. He did not wish to keep up in Australia any Irish reminiscences of hatred. But Duffy refused, and thenceforth a feud existed between him and his patron. He was too cautious, however, to resign his office, until he had held it long enough to secure a pension by two years' service under O'Shanassy. Of such smoulderings of sedition there was no sign among the people in Australia, although they were occasionally invited by Dr. Lang to worship his idol of independence. He, true to his instincts, addressed Duffy in fulsome praise on the arrival of the latter in Australia. Their aims were common. Other men sought federation as conducive to Imperial and national greatness. They seemed not to recoil from a quarrel which might convert the disaffected into rebels, and shake off the domination of the Saxon or the King. Far different were the aims of Wentworth. His early impetuous efforts were claims for equal rights of citizens of the Empire in Australia as in England. Trial by jury, independence of Judges, liberty of the press, taxation by representation, self-government under limits recognized in the English Constitution, and with a common loyalty to the Crown—these were the points of the charter for which he laboured when young. They were consistent with the work of his later life. He had no sympathy with those who sought in unlimited suffrage the means of overbearing by the *fæces civitatis* the sound common sense and prudence of the industrious orders who maintained it. Superficial critics assailed him as a renegade from his early principles when they found him advocating an hereditary order which should elect from its own ranks the second legislative chamber. But he argued that his purpose was ever the same;—to build up in his native land a polity like that of England,—to bind the colonies to their father-land by common ties and by institutions as like as circumstances would permit,—to graft the slip of the ancient stock so closely by assimilation, that in Australia as in England a man might say, "A British citizen and loyal subject of the Crown, I stand without any disability arising from remoteness from the Throne."

Though Dr. Lang had not in 1846 thought it safe to propose rebellion or to advocate independence, as he did at a later date, the sagacious Gipps forecast coming events. In a despatch written in April 1846 he warned Lord Stanley that, assuming the separation of Port Phillip to be necessary, "some security should be taken for establishing in it a system of local self-government before any legislative body be called together founded either wholly or in part on the principle of representation." After dissuading the Colonial Office from establishing bicameral legislatures, and pointing out that a Colonial Government must from its very nature differ from that of the parent State, he added—

"The non-admission or the reluctant admission of this truth in the colonies, and the constant indisposition which prevails in England to put it prominently forward even on occasions of high importance, appear to me to lie at the root of nearly all the misunderstandings which occur between Great Britain and her colonial dependencies. The political position of a British colony is no unenviable one; to be a member of the British Empire is alone a glorious privilege; but those who enjoy it cannot be allowed to forget that the condition of a colonist is one to which duties are attached, as well as privileges; that men who claim to be Her Majesty's subjects cannot be at the same time members of an independent republic."

Thus was a Whig functionary converted by a sense of duty into a national logician. The danger he foresaw was not unreal. There were elements in the colonies, actuated by deep distrust of an over-ruling power "correcting the ill aspects of planets evil." Such men as Lang or Duffy were of course prone to make or to embitter differences at any time. But they commanded no majority. The real danger lay in the possibility that on any occasion when disputes might arise between the Crown, or its representative, and the leaders of the people, the great mass of the latter might insensibly be drawn into such a position that they would accept as champions the revolutionary disturbers whom in their saner moments they had refused to follow.

There was no disloyalty in the heart of Wentworth. There was none in that of Washington when ill-courses were advised by Grenville. But Wentworth, like Washington, might be

driven to choose between his native land and the mother-country. If the affections of the people could be poisoned by the malignity of the few, the venom might rage as an epidemic through the blood of all. Sadly must the gallant Gipps have ruminated upon the future if he reflected that by arbitrary methods he had furnished a common meeting-ground for the squatter and the merchant, the agriculturist and the shopkeeper; for the patriot Wentworth, the disloyal Lang, and the versatile Lowe.

CHAPTER XII.

VAN DIEMEN'S LAND.

As the term of office of Sir George Gipps was prolonged beyond the customary period, it may be convenient to examine in some respects the affairs of other colonies at the time. The agitation against, and the abolition of, transportation to Van Diemen's Land will require a separate chapter, and carry inquiry to the era of discovery of gold and the eve of Government by two Chambers, with Ministries removable by adverse votes, and supposed to be responsible, although no machinery was provided for their impeachment or punishment.

In Van Diemen's Land there is nothing to relate about the aborigines. They were not all dead, but they were dying, and their fate has been recorded already in order that history might not lag behind the rapidity of their destruction. Sir John Franklin, the successor of Colonel Arthur, on the 5th January, 1837, relieved Colonel Snodgrass (the senior military officer), who administered the government for about three months after Arthur's departure. Colonel Snodgrass during his brief rule prepared trouble for the new Governor. He was induced to convene a Synod of Presbyterian ministers and elders to settle their Church upon firm foundations.

There were disputes. Some denied that the Governor could lawfully exercise such a function as devolved upon the Crown in Scotland. Others declared that the Governor, as representative of the Crown, was bound to recognize the Church of Scotland, as well as that of England, after the manner of the Sovereign, or to recognize no Church. Archdeacon Hutchins denied that the local recognition in Scotland could be transferred to other parts of the empire. Cornishmen might as fairly claim to carry their customs with them. The Rev. Dr. Lillie was firm on the other

side. Scotland was "the independent dame she ever was." Strong in the articles of union, she would "retire to her mountain freedom" rather than consent to their violation. Both champions were courteous and respected.

The discussion continued after Franklin arrived. When the Synod assembled, he sent his private secretary to entreat them to stay proceedings. They, however, elected a Moderator, rather than compromise their rights. Franklin issued a proclamation annulling that of his predecessor, and the assembly was dispersed. But Franklin promptly showed that he had no antipathy to religious freedom or license. The legislation of Bourke to enable the Government to distribute aid to various religious bodies was initiated soon after Franklin's arrival. So trustful was he in its preparation that he did not contemplate abuse of its provisions, and within three years he was compelled to take power by law to refuse compliance with applications which the Governor in Council might deem uncalled for. He endeavoured to impress his mildness upon general laws. He relaxed, in 1837, the stringency of Arthur's newspaper law. Penalties were reduced, and the very title of the new Act breathed good-will. It was "to assimilate the law to that of Great Britain."

An Act to prevent cruelty to animals, and a measure to "provide for the maintenance of deserted wives and children," were passed in the same year. The need of them might have reminded Franklin that there were elements with which soft words could not cope, but he strove by personal amiability and gentle remonstrance to pacify others. He implored them to vie in cherishing domestic virtues "which will be found to characterize individuals of every party, and in making the generous sacrifice of private feelings for the general good rather than aggravating the importance of grievances which must render such forbearance impossible." But he did not escape censure. Captain John Montagu, the Colonial Secretary, and Captain Forster, the chief police magistrate, who were connected by marriage with Colonel Arthur's family,[1] were men of marked ability, and it was soon whispered that Arthur's influence remained behind him. Franklin endeavoured to remove the

[1] They had married nieces of Arthur's wife.

odium by appointing magistrates hostile to Arthur, and by calling to his Council a man between whom and the late Governor there had been differences. He also threw open the doors of the Legislative Council during its deliberations. The change in the community was great, and men speculated wonderingly as to the result.

Maconochie, the private secretary, made no secret of his project for governing criminals by love and rewards, and Franklin seemed equally bent upon largesse among other classes, whom Arthur's strong hand had previously controlled. Maconochie's pronounced opinions, however, led to his dismissal from his post, and the stronger men of Arthur's choice remained masters of the situation, until Maconochie, by his subsequent failure at Norfolk Island, had proved that they had correctly gauged him. Meantime Franklin's position was difficult. The implements of Arthur's contrivance were ill-suited for his hand. Even his own nominee in his Council opposed him in a measure proposed in 1838 to prohibit distillation in the colony. The Chief Justice (Pedder) vainly strove to introduce a clause remitting to a jury the compensation of those who had under the existing law (of 1836) embarked in the occupation of distilling. The Governor carried his point; but after some years instructions from England caused compensation to be made. Franklin was laudably desirous to provide means for higher education, and corresponded with a friend, the celebrated Dr. Arnold of Rugby, on the subject.[1] Arnold selected a former pupil, John Philip Gell, for the "great missionary labour." Mr. Gell was then at Cambridge, and Lord Normanby accepted Arnold's recommendation. Franklin aimed high. He desired (Arnold said) to obtain "a Christian, a gentleman, and a scholar, a member of one of our Universities—a man of ability and vigour of character, to become the father of the education of a whole quarter of the globe."

[1] Arnold's opinions were in violent opposition to those of some of Franklin's friends. A convict colony was to him "shocking and monstrous." "If they will colonize with convicts I am satisfied that the stain should last not only for one whole life, but for more than one generation; that no convict or convict's child should ever be a free citizen" . . . ; but Arnold greatly respected Franklin, and added, "You will be, I know, not in name nor in form, but in deed and in spirit, the best and chief missionary" (July 1836).

Mr. Gell selected New Norfolk, and on the 6th November, 1840, the foundation-stone of Christ's College was laid with due ceremony, Captains Crozier and Ross, R.N. (then conducting an Antarctic expedition) being present. In the words of Franklin, the college, dedicated to our Saviour, was "intended to train up Christian youth in the faith, as well as the learning of Christian gentlemen."

The older college of thievery formed by England was not an idle spectator. The deposited coins and inscriptions were stolen in the night. The disastrous omen was not falsified. The establishment did not prosper, and came to an end under the government of Sir Eardley Wilmot a few years afterwards. But the inhabitants ever evinced a laudable desire to secure the means of higher education, and though unable to establish a local university, they subsequently placed those of Great Britain within the reach of some of their youth. From the general schools, exhibitions led to the Hutchins School, the High School, Horton College, and the Church Grammar School, and from those superior schools two Tasmanian scholarships of £200 a year, each tenable for four years, led to a British University: while the degree of Associate in Arts was conferred by the Council of Education in the island.

The rapid material progress of the island under the long rule of Arthur gave importance to its commerce, which was reflected in numerous Acts passed by his successor. A lengthy insolvent law was passed in 1839. It freed an insolvent, who took the benefit of the Act, from liability to imprisonment for debt, but it subjected to transportation not exceeding seven years, "or imprisonment with or without hard labour" for three years, any insolvent impeding the operation of the law or wilfully defrauding his creditors. The commercial disasters which swept over the mainland were not unfelt in Van Diemen's Land, and the uneasy relations between Franklin and his principal officers increased his difficulties. The fund from land sales under the regulations of Lord Goderich was at first considerable; and, under the impression that transportation to the island would be discontinued at an early date, immigration was stimulated. Speculative consignments of merchandise poured into the colony at a time when, under the craving for land, the settlers had

anticipated their means in purchasing under the new regulations. Advances from the banks, freely made, were vigorously reclaimed. The distraction of capital and enterprise to the inviting pastures at Port Phillip had weakened the internal resources of the island. In 1843 it was announced that no income could be expected from sales of Crown lands.

The commercial crisis had been as severe as in New South Wales. Under the hammer of the auctioneer, and through the portals of the Insolvent Court, the heritage and accumulations of families were dissipated like dreams. In the time of distress it was consolation only to the evil-minded to reflect that much loss had been sustained by shippers from England, whose goods had been sacrificed. The resource of "boiling-down" sheep and cattle for the sake of their fat, fixed a minimum value for fat stock, as in Sydney, and rescued some persons. The revival of prosperity was slow, and was promoted, like adversity, by extraneous causes. Port Phillip created commerce, and the copper mines of South Australia invigorated that colony. But the evils in the island were imminent and overwhelming. The British Government resumed transportation on a large scale in 1841, and under a new probation system, initiated by Lord John Russell, but extended by Lord Stanley, gangs of convicts, varying from five hundred to two hundred, were interspersed throughout the island in a score of places. In 1841 the convicted male population exceeded the free, and in the four years ending in 1844 fifteen thousand more prisoners arrived, and free immigration sunk to zero.

The organization of the new system for controlling such an army of criminals under rules imposed in England fell upon Sir John Franklin, ill-fitted by disposition or capacity for the task. He informed Lord John Russell in 1841 [1] that he had appointed Captain Forster, the chief police magistrate (one of Arthur's *protégés*), director of the probation system. He transmitted standing orders for the regulation of the new department, devised by that gentleman, and sanctioned by the Governor and Council. The working of the system, and the aggrievement of the colonists at its moral and pecuniary burdens, it may be well to condense in a summary with which the convict question may be dismissed.

[1] Parliamentary Papers, vol. xlii. (9th July, 1841). 1843.

Though, when practical ability was required, Sir John Franklin was fain to appeal to men trained by Arthur, he could not, like Arthur, control them, and was eventually worsted in a contest with Montagu,[1] the Colonial Secretary. He was galled at the idea that he was unable to govern, and his kindliness of disposition working with his injured self-esteem, induced him to restore to office an officer dismissed for negligence. The imperious Montagu announced that thenceforward he would limit his labours to official routine; and irksome details were thrown upon the Governor, who had not Montagu's ability to dispose of them.

[1] Unable to trust himself, the confiding Franklin relied upon his wife, and endeavoured to profit by her criticisms on despatches prepared for him by Montagu's order. The latter, to dispense with the ordeal, was accustomed to submit the despatches at so late an hour that there was no time to effect suggested alterations; and Lady Franklin's marginal pencil notes were ruthlessly erased. When Franklin screwed his courage to the sticking-place and issued an order, Montagu would gravely exhibit a former order made by Franklin (on Montagu's advice) of a contrary nature, and the new resolution was abandoned. Once when confronted with a new difficulty the kind old man threw himself back in his chair and sighed. "Good heavens! what a position is that of a Governor here! He is like a man sitting on a lime-kiln. He has no time to get cool!" But the wary Montagu never grew hot. He coolly quarried the limestone for Franklin's kiln. When Franklin returned to England he printed (1845) for information of friends, but did not publish, a justificatory pamphlet of more than 150 pages. He sent a copy to the Secretary of State. His chief source of annoyance was the fact that Montagu had sent a "libellous manuscript" from England, purporting to be a memorandum of conversations between Montagu and Lord Stanley and Mr. Hope. Montagu himself was constrained to admit that in sending the memorandum to Van Diemen's Land he was "wrong" and "thoughtless." Franklin was indignant beyond measure at Montagu's reference to Lady Franklin's supposed interference with public affairs. Montagu's successor Bicheno carried with him a MS. book in which Montagu had stated his case. The book was shown to selected persons. Franklin called upon one of them to produce it. Franklin would (it seems from his unpublished volume) have prosecuted the promulgator of Montagu's MS. book, if he had "succeeded in getting the book into his own hands." The whole affair was a warning to Governors that tact and discretion are requisite to guard them from unbecoming positions. Lord Stanley (13th September, 1842) said: "Reluctant as I am to employ a single expression which is likely to be unwelcome to you, I am compelled to add that your proceedings in this case of Mr. Montagu do not appear to me to have been well-judged, and that your suspension of him from office is not, in my opinion, sufficiently vindicated." Lord Stanley's despatch was the text upon which Franklin compiled his pamphlet of 1845.

Nor was this all. In 1842 Montagu ventured to write to the Governor, that while he and all members of the Government admitted Montagu's memory to be remarkably accurate, "your Excellency will pardon me for submitting to you that your officers have not been without opportunity of learning that your Excellency could not always place implicit reliance on your own."

Montagu was dismissed, and was ready to make some kind of apology. Franklin agreed to testify the value of his past services with a view to his employment elsewhere. Montagu, with this testimony, went to England, was consulted by Lord Stanley, and obtained an order from him for payment of salary from the date of his dismissal. Lord Stanley went further. He wrote to Franklin, that though the relative positions of Governor and Colonial Secretary had been rather inverted, Montagu's superior ability had been the cause, and he gave Montagu a copy of his despatch, which the latter promptly sent to his friends in the island, whither he did not return. He became Secretary at the Cape of Good Hope, and Mr. Bicheno was sent to Van Diemen's Land. Franklin bitterly complained of the recorded statements of Montagu, at the Colonial Office, that Lady Franklin had unduly influenced his Government. A published despatch avers that he ceased to govern because his term of office had expired;[1] but sympathy was stirred when his successor, Sir Eardley Wilmot, arrived before Franklin had been officially warned of his own recall. It was not known, till Lord Stanley explained it, that a vessel bearing a despatch to Franklin had been driven back by stress of weather; and that he was not deemed dismissed, but recalled at the close of a term of office.

He left the island amidst gratifying demonstration of approval of his private worth and character; but, even had the public applauded his official career, he could hardly have obtained consolation under the circumstances of his removal. He was not pacified by Lord Stanley's attempts to soothe him. The Secretary of State declined to discuss the question of the interference or non-interference of Lady Franklin. The aggrieved sailor found or hoped to find satisfaction in some deed of renown. Returning to England in 1843, he sought the command of an

[1] Parliamentary Papers, vol. xlii. (9th July, 1841). 1843.

expedition in the Polar Regions. With his friend Captain Crozier, he sailed in 1845 with the ships 'Erebus' and 'Terror.' He and all his companions perished, but long years elapsed before other heroic explorers discovered any of their remains. He had indeed built an enduring monument, by inscribing his name in the icy records of the North. That which he did for himself in sacrificing his life he had endeavoured to do for Flinders, under whom he had served as a midshipman on the Australian coasts. Franklin obtained permission from Colonel Gawler to erect a monument to the perpetual memory of the "illustrious navigator, his honoured commander."

At Port Lincoln, where Flinders made his survey when discovering South Australia, a white obelisk was erected with an explanatory inscription. The adjacent district bears the name of Flinders, and on the west shore of Spencer's Gulf Franklin harbour revives the name of his grateful friend.

Sir Eardley Wilmot arrived at his post in August, 1843. He had been a member for Warwickshire, had written upon penal discipline, and Lord Stanley sent him to the great island gaol where he could test his capacity for governing convicts as well as free people. He was warmly welcomed. Unfortunately the reprieve of a bushranger who had fired at but had not killed a settler whose house was attacked, brought him into collision with the friends of the sentencing Judge, who had declared the career of the convict to be of unexampled atrocity. The Judge himself directed the sentence of death to be merely recorded in a subsequent case, on the ground that the recent reprieve was almost equal to abolition of capital punishment. Armed marauders, capable of any crime, freed from apprehension of death, were terrible to the contemplation of inhabitants of a sparsely-peopled territory. A voluntary corps was organized for self-protection, but was arrested by Wilmot's declining to sanction its incorporation, the levying of armed men being the prerogative of the Queen. He endeavoured to ally himself with the agricultural interest, and obtained a report from Major (afterwards Sir Arthur) Cotton, a hydraulic engineer of distinction, as to the advantages which would accrue from storing lake waters and distributing them by irrigation in due season. The labourers were to be convicts, and Lord Stanley at the time declined to

interfere with the existing allocation of the prisoners. He did, however (at the instigation of Wilmot, who was urged by the colonists), represent to the Treasury that it was only just that Van Diemen's Land, crammed with English felonry, should be relieved of some police and gaol charges at English cost, and in 1845, the Treasury made provision for an expenditure not exceeding £24,000, then amounting to two-thirds of the annual outlay. As there were more than 29,000 convicts in the island (about the same number as the free population) this charge seems inadequate, but towards the maintenance of convicts the amount paid by England in the same year was about £167,000. The control of the convicts was arrogated by the Colonial Office as a sequence to the expenditure on their maintenance; but it could hardly be hoped that control in such a case would be successful. The horrors to be shunned were too far from the eye of the controller. Wilmot, like others, incurred odium by not making successful a system for whose failures he suffered, but whose defects he had not power to remove. He also bore the brunt of public condemnation, though he might personally have remonstrated to the Secretary of State against the thing condemned. But when, in 1845, he transmitted a numerously-signed petition of free colonists, he traversed some of their statements in a way that gave much offence when published by the House of Commons in the following year. They had appealed to him for testimony as to their character, and the truth of their allegations. He said the latter were "erroneous and exaggerated," and that the petitioners were composed of "a small class of inhabitants, who systematically opposed the local government;" "disappointed men;" men who would have "signed anything;" with "some few honourable, benevolent, and conscientious men," who in good faith made an earnest appeal to the Queen, thoroughly believing all that they said.

Mr. C. McLachlan, then in London, charged with the duty of having the petitions presented to the Houses of Parliament, on seeing Sir Eardley Wilmot's despatch as printed by order of the House of Commons, at once addressed the new Colonial Secretary, Mr. Gladstone, in vindication of the petitioners; and the colonists sympathized with their advocate, and were embittered against their critic. Meantime he was plunged into political

difficulties. The application for constitutional government, made in 1835 under Arthur, renewed in 1838 under Franklin, was revived with intensity in 1845. The petitioners had felt slighted when the partly representative Legislature granted to New South Wales had not been extended to themselves by the Act 5 and 6 Vict. cap. 76, in 1842; but were obliged to content themselves for the time with Lord Stanley's announcement that elected representatives were incompatible [1] with the continuance of transportation.

Stirring events in 1845 forced the question upon them again. Under the existing law the Legislative Council was composed (besides the Governor) of fourteen members, all nominated by the Crown; the Governor having a vote and a casting vote, and the sole power of initiating measures. The non-official members, like their types in Sydney, continually differed from the Governor as to expenditure, and thus gave proof of the impartiality with which in both places the Governors had selected them as legislators. Disagreement reached a crisis in 1845. In July Bills for imposing lighting and paving rates in Hobart Town and for erecting tolls were considered, and a further Bill for placing more charges on publicans, auctioneers, butchers, hawkers, carters, boatmen, and others, was announced as in contemplation. A public meeting was held to protest against taxation without representation, and Anthony Fenn Kemp, who nearly forty years previously had assisted in deposing Governor Bligh, was called upon to preside. The lighting and paving, and the toll Bills, were rejected by the votes of the non-official members; the official nominees voting for the Bills. In August the estimates for 1846 being submitted, Mr. Dry moved for inquiry into the departmental expenditure, but was out-voted by Wilmot and his official phalanx. An adjournment of the estimates for three days was proposed and lost in like manner. Wilmot then suddenly, without finishing his estimates, adjourned the Council to the 21st October, hoping for despatches which might relieve him from some of his financial difficulties. He had earnestly made known the hard condition of the colony, but Lord Stanley left him to bear the blame without the credit

[1] This opinion restrained neither Lord Stanley nor Mr. Gladstone, when in 1846 they sought to revive transportation to New South Wales.

of having remonstrated against the grievance. The Council met in October. Information asked for was refused on a division in which Wilmot used his two votes, one non-official member being absent. The estimates were proceeded with. Mr. Dry vainly moved a postponement of the Appropriation Bill for six months, and at the last moment the non-official members shook the dust from their feet and left the Council chamber without a quorum. On the following day Mr. Gregson apologized for the absence of his friends, who were preparing a protest. Wilmot denounced as unconstitutional and disloyal Gregson's assertion that "no Bill should pass until the Home Government paid the judicial, police, and gaol expenditure," and the leaving of the Council without a quorum. The only non-official member who sided with Wilmot was absent, and only Wilmot's casting vote gave him any control. The absentee nominee had also recorded a protest against the police expenditure as an unjust burden on the colony, cumbered with Imperial felons. Captain Swanston, one of the six, waited on the Governor to deprecate his proceedings, and warned him that the non-official members would not shrink. They had indeed the tumultuous support of the public; and more than four thousand signatures were attached to a petition bringing the facts before the Queen, and praying for a representative assembly.

Wilmot resolved to persevere. On the proposal to read the Bill a third time, Dry rose to read a protest, but was declared out of order, and Gregson moved for delay to enable himself and his friends to prepare other estimates. His motion being lost, the six friends abruptly left the chamber shorn of a quorum, sent their resignations to the Governor, and prepared a letter to Lord Stanley in justification of their conduct, and for submission to the gracious consideration of the Queen. Wilmot gazetted the resignations of Richard Dry, T. G. Gregson, Charles Swanston, Michael Fenton, John Kerr, and William Kermode. Out of doors they were hailed with patriotic enthusiasm. The echo of applause was reverberated from New South Wales, where Wentworth with masterly ability contended for similar objects on a larger arena. Dry was always beloved, and now was idolized. That a native of the despised island should take so proud a position as a statesman, and be at the same time a pattern of

courtesy to all persons of all classes, was the boast of his compatriots. For Mr. Gregson a subscription of £2000 was raised as a proof of the value set on the services of a leader, able, unflinching, not ineloquent, acrimonious, and coarse. Sir Eardley Wilmot had difficulty in obtaining substitutes for the members he had lost. In seeking them he disclaimed any desire to influence their votes, or to object to legitimate opposition. Eventually he succeeded; but, as compared with the lost councillors, for weight and capacity the new compared with the old were as a Satyr to Hyperion. On Dry's triumphal return to Launceston all the crowd which the land could furnish poured out to do him honour. His horses were taken out, and his carriage was drawn by men. Addressing the crowd from a balcony, he defended the course he had taken, and urged the inhabitants to petition Parliament, which was not disposed to do them wrong. Their state was worse than slavery, and the country which voted an enormous sum to annihilate negro slavery would not be backward in redressing the grievances of colonists.

While these events were occurring Lord Stanley's negotiation was made with the Imperial Treasury to defray two-thirds of the police and gaol expenditure.[1] Had the colonists known of it the Governor might have retained his counsellors; but he had been condemned to make bricks without the straw which knowledge of sympathy in England would have afforded. It smoothed the path of the new councillors, two of whom nevertheless resigned rather than agree to a measure for issuing debentures. Wilmot's legislative efforts bore some fruit. His Lighting and Paving Bill passed, and Commissioners were elected under it. The losing candidates demanded, but did not obtain, a scrutiny, for which the Act had made no provision. The elected Commissioners shrank from levying rates whose validity might turn on the fact of their own election; and the Government being unwilling to amend the Act it practically lapsed. While Wilmot was thus struggling, a despatch from Mr. Gladstone abruptly recalled him. Lord Stanley had complained that he received insufficient information from the colony. The horrors of the

[1] House of Commons Papers, vol. xxix. 1846. Sir J. Stephen to C. E. Trevelyan, 27th November, 1845.

probation and gang system were glaring enough to be seen even from afar, and it was convenient to sacrifice the viceroy whose hands had been tied by instructions.

Lord Stanley had expressed dissatisfaction, and Mr. Gladstone communicated the determination of the whole Government. The laboured despatch which he signed was so "larded with many several sorts of reasons" as to imply a wish to veil in a cloud of words the unpleasantness if not the indefensibility of his task. Wilmot had not shown an

"active care of the moral interests involved in the system of convict discipline;" "verbal suggestions, however elaborate, can never be adequate to supply so great a deficiency;" "the immense interests involved in that method of punishment for this country, for the colony, and for the individuals, absolutely forbid Her Majesty's Government to allow them to be gratuitously compromised." "They have no hope remaining of being enabled, through your instrumentality, to bring the character and results of transportation to a fair issue, of being enabled either to achieve success or even to ascertain failure."

Page after page of the despatch bewildered the Governor with similar language. At the close, allusion was made to the six retired members of the Legislative Council. Mr. Gladstone could not concur with Wilmot in designating their conduct as disloyal, but he admitted the difficulties of the position, and the collision with them had "no part in the motives" which induced the Governor's recall.

On the same day (30th April, 1846), Mr. Gladstone signed a secret despatch intimating that though Wilmot's failure in a penal colony might leave him eligible for other employment, there were rumours about his private character which might render re-employment impossible. The despatch did not specify any of the rumours. Aghast at this double blow, and the formless phantasm of vague imputations, Wilmot replied on the spur of the moment. He would call on the Executive Council to investigate and report. He demanded dates and circumstances connected with any charges against him. He was confident that the Secretary of State would sooner or later do him justice, and rescue him from the double loss of office and character occasioned by the grossest falsehoods that ever op-

pressed an English gentleman. He believed that on receipt of the report of the Executive Council in England he would be restored to favour, and appointed in some colony; but he asked for more than mere restitution. He asked for personal distinction, such as the civil Order of the Bath, or of St. Michael, that the world might see that Her Gracious Majesty would not suffer the lowest of her subjects to be treated with injustice. In reply to the lengthy despatch about his conduct as Governor he wrote a lengthy justification, appealing to the numerous reports of Captain Forster, the Controller-General, which comprised the amplest information, which Wilmot had transmitted, and on which he had commented. He averred that he had earnestly pressed upon Lord Stanley the need of religious instructors ordained in England, as the local diocesan would not ordain them. He cited the improved social, monetary, and commercial position of the colony as testimony in his favour.

The wail of the Governor about his character found immediate sympathy in the colony. There had been, in 1845, in the 'Naval and Military Gazette,' an anonymous paragraph from Melbourne, saying that Wilmot set a bad example, and that no people of standing would enter his house except on business. The statement had been promptly contradicted as soon as seen, in the colony (though the contradiction had not reached England when Mr. Gladstone wrote his despatch). The Chief Justice, the Colonial Secretary, the Colonial Treasurer, and other leading persons wrote to the 'Naval and Military Gazette,' and declared that the paragraph was "totally (and here most notoriously) false." The Executive Council, when appealed to by Wilmot, associated with themselves the Senior Military Officer, the Chief Justice, the Venerable the Archdeacon, and the Rev. Mr. Lillie, the much respected Presbyterian minister, to report on Mr. Gladstone's imputations. The Committee, unable to investigate unspecified charges, were unwilling to open a general court of inquiry which would in its very nature be unseemly. They reported that, though the inquiry asked for was impracticable, it was "due to Sir Eardley Wilmot, to certify in the most explicit terms, that as far as their own observation had gone during the private and official intercourse which they personally had had since his arrival, nothing had ever transpired which would

justify the allegation that he had been guilty of the violation of the decencies of private life."

The maligned Governor forwarded this exculpation, and sent with it a copy of an address then receiving signatures in public. It contradicted the aspersions on his moral character, and declared that the signers were imperatively called upon to contradict them, inasmuch as many of them had "differed in opinion on various measures" of Wilmot's Government. Legislative Councillors, chaplains, magistrates, and hundreds of others signed the address, and in November, 1846, Wilmot transmitted a roll of names which are entombed in the Papers of the House of Commons. More were to follow.

Wilmot's friends took up his cause in Parliament,—Mr. Spooner, member for Warwickshire, being the leader,—and there, as in the colony, the charges melted into air when subjected to examination. His family might derive consolation from the tribute paid to his character by Sir Robert Peel, and the admission on all sides that the charges had been unfounded, and were utterly swept away. The names of the informants, three in number, who had set the Colonial Office in motion, were not given up; but Mr. Curteis denounced them. He would not rate them as gentlemen. They had been proved to have circulated a base, foul, and cowardly calumny. It is unpleasant to reflect that one of them, Hampton, was afterwards made Controller-General of Convicts in Van Diemen's Land, and promoted to the Government of Western Australia. His qualifications were supposed to fit him for distinction in a criminal sphere. The object of calumny did not live to hear of gracious words in Parliament, to receive from the Queen any mark of favour, or even to read the cold hard words with which Earl Grey announced that no favour would be shown. He had determined to abide in patience the decisions of the Government; although Mr. Latrobe, the Superintendent of Port Phillip, had arrived in October 1846, to supersede him. But patience would not abide with him. He died broken-spirited in February 1847, and was publicly buried amidst universal marks of sympathy and regret.

Idle words were written two months afterwards (to Sir Eardley Wilmot, Baronet) by Earl Grey. It would be impossible

for the Earl to recommend him for distinction. Orders could only be conferred as rewards for distinguished service, and Wilmot's services were not such as could obtain Earl Grey's recommendation. Wilmot had sent an earnest petition to the Queen. In May 1847, Earl Grey wrote that the Queen received it very graciously, but that he had not been able to advise Her Majesty to accede to it. In March 1847, Earl Grey had written in the same bootless manner, "I can hold out to you no expectation of its being in my power to submit your name to Her Majesty for future employment."

Some kindlier words, winged by the pen of Gladstone, never reached Wilmot's eye. Earl Grey had sent to Mr. Gladstone a copy of the Governor's cry of indignation, and demand for justice, and of the vindicatory address of the colonists. Such a public attestation was in Mr. Gladstone's opinion an appropriate and sufficient answer to the vague accusations they confuted. Mr. Gladstone was not, however, in a position to try the issue he had raised. He had then discharged a repulsive duty, and he now hoped that in doing it, he had not rendered it additionally and needlessly offensive by wanton obtrusiveness or inconsiderate language. He whom he would have consoled had gone to a tribunal where no error will be made. But though Wilmot was beyond the reach of human hardness, or the touch of human pity, the page of history would be less repulsive had it included a sign of such conscience in the Colonial Office as Mr. Gladstone evinced outside of it. To Wilmot's son he endeavoured to make some amends for the despatch to the father. He wrote that the address from the inhabitants was more than sufficient to remove whatever prejudice the charges were calculated to raise against the late Sir Eardley Wilmot.

Mr. Latrobe, ever laborious in duty, devoted himself sedulously to probing the condition of the departments, dismissed incompetent officers, and reported adversely to the continuance of the probation system.

The arrival of a new Governor, Sir W. T. Denison, in January 1847, relegated Mr. Latrobe to his post at Port Phillip; and enabled Denison to moralize in his mind over the changes of life, as he stood side by side with Mr. Latrobe at the grave of Wilmot.

Sir William Denison had been selected by Mr. Gladstone, but by the fall of the Peel Ministry it devolved upon another Secretary of State, Earl Grey, to issue instructions to the new Governor. He was unquestionably able and resolute. Like Sir George Gipps, he was an Engineer officer. He had in that capacity controlled public works in the English dockyards, and as prison labour was largely used in them, it was thought by Earl Grey, that Sir W. Denison was "peculiarly qualified" to govern Van Diemen's Land, where "one of the first objects to be attended to at that time was to render the labour of several thousands of convicts more useful than it had hitherto been."

Earl Grey entered upon his task with zeal. He had long interviews with the Governor, and he saw Dr. Hampton, whose name had been used in connection with rumours about Sir Eardley Wilmot, and who, on the death of Forster, the Controller-General in Van Diemen's Land, was appointed as his successor. Earl Grey, perhaps for good reasons, considered him well fitted for his peculiar post. Sir W. Denison, as a practical man, took with him a few non-commissioned officers of the Sappers and Miners and Royal Artillery to assist in carrying on public works, and Earl Grey must have felt happy in the conviction that he was despatching a man able and willing to do all that was required. His own confidence in himself was daring. Such a Secretary of State was likely to come into conflict with the protervity if not with the patriotism of Australian colonists; and it was not long before he succeeded in doing so. In Van Diemen's Land he paved the way for his own difficulties by a phrase in a despatch (5th Feb. 1847): "I have to inform you that it is not the intention of Her Majesty's Government that transportation to Van Diemen's Land should be resumed at the expiration of the two years for which it has already been decided that it should be discontinued." He afterwards argued[1] that the context of the despatch implied that "the ultimate removal of convicts to the colonies was an essential part of the plan decided upon;" but he admitted that the expression might "have been an unguarded one," and that the Governor "from misapprehending his instructions" was

[1] 'The Colonial Policy of the Administration of Lord J. Russell.' By Earl Grey, vol. ii. p. 18. London: 1853.

"induced to declare to the Legislative Council, in terms much more positive than his instructions were intended to warrant, the determination of the Government not to send any more convicts to Van Diemen's Land." "The error (he pleaded) could not commit the Government even if the words used by Sir William Denison had been much stronger than they really were."

Van Diemen's Land was not so bare of men of worth that such ignoble sophistry could mislead her public opinion. The would-be violator of the Treaty of Waitangi in New Zealand was not to be allowed by his countrymen in Van Diemen's Land to retreat from a position assumed by himself and fortified by the Governor. They did not look upon an announcement distinctly made to them in the Queen's name as one which a breath from Earl Grey could unmake without discredit to him and injury to the colony. But the struggle to abolish transportation need not be told at this stage.

Earl Grey had the prudence to leave some discretion to Sir W. Denison with regard to the Legislative Council. It was sought to soothe the feelings of the men made famous under the term—"patriotic six." The Governor summoned them, and their successors (appointed by Wilmot), and asked them to agree upon the names of six whom he might re-appoint as his Council. The six would not consent to severance; and he was about to cut the knot by disallowing Wilmot's appointments as informal because the instruments appointing them had not declared in room of whom each appointee was named. The Chief Justice and other legal functionaries had pronounced in favour of such a procedure, but at the last moment a document was discovered which showed that Wilmot's appointments had been duly made. To avoid the dilemma the Governor adjourned his Legislative Council until he might receive Royal warrants from England. They arrived after some months, and the "patriotic six" were duly installed under them in 1848.[1]

But though the Legislative Council was suspended, the Executive Council were busy, and with their advice the Governor amoved one of the Judges. The amotion of Judge Willis at

[1] The Royal warrant was dated at Osborne, 31st July, 1847. The facts are to be found in Sir William Denison's 'Varieties of Viceregal Life.' (London: 1870.)

Port Phillip by Sir George Gipps, and the decision of the Privy Council on his case, warned Sir William Denison that it was necessary to give Judge Montagu an opportunity of showing cause against his removal, and all steps were taken carefully. The Judge was in a state of indebtedness, and his creditors had been prevented from recovering their claims by reason of his position as Judge. As early as 1844 Lord Stanley (whose instructions were generally cogent) had directed Sir Eardley Wilmot to call upon Montagu to pay his debts or to take leave of absence so that proceedings might be instituted against him, and any recorded judgment might be enforced. Montagu pacified his creditors by payment. In November 1847, Sir W. Denison received a petition from Anthony McMeckan, averring that he was a creditor, and had been estopped in pursuing his claim at law by reason of Montagu's position as Judge. He prayed that the Judge might be suspended in order that legal proceedings might be taken. The petition was referred to Montagu, who did not deny the debt, but asserted that until a certain security could be sold his position would be damnified by paying. The debt was about £280. He avouched that his debts had not sprung from extravagance. He had brought £4000 into the colony. "I was wealthy. For a portion of my land I had been offered £10,000 . . . Suddenly the probation system came. The market is destroyed. . . . All my twenty years' hard struggling in my arduous office, all its advantages, destroyed by the British mal-administration of this territory." He cited his past services, and protested that only Her Majesty could remove or suspend him. There were many meetings of the Executive Council. There was voluminous correspondence. There were doubts whether it was expedient to amove the Judge, under statutory power, for "misbehaviour in office," or to suspend him by virtue of prerogative. The former course was adopted.

Mr. Thomas Horne, the Attorney-General, was appointed in room of Montagu. Mr. Valentine Fleming, the Solicitor-General, became Attorney-General. Mr. Francis Smith became Solicitor-General. Montagu was going to England to protest against the proceedings. His butcher seized him for debt. He applied to the Executive Council to pay it, so that he might go. They declined; but a private subscription, to which Sir W. Denison

gave £20, enabled him to depart. The English Government approved of his dismissal.

Such were the events in the lives of Governors and Judges in 1848. A serious difference between Sir W. Denison and the Chief Justice, which occurred nearly at the same time, may close the record of events in the island for a time. By the 25th section of the Constitution Act (9 Geo. IV. cap. 83) it was required that the purposes and the appropriation of every impost should be "distinctly and particularly stated in the body of every law" made in the colony. By the 22nd section the Judges were empowered to transmit, within fourteen days of the passing of a law, a representation that it was repugnant to the Constitution or to English law. Sir Eardley Wilmot's Dog Act had been duly sent to the Supreme Court, and the Judges had not exercised their power of representation with regard to it. But in November, 1847, its validity was tested on appeal to them, and they declared it void. Many other Acts might be rendered null in like manner, and the colonial revenue might disappear. The law officers who had been responsible for their construction were Horne and Fleming. The condemning Judges were Pedder and Montagu. Horne's promotion to the Bench rendered it probable that he would there support his former opinions; but when the Registrar of the Court was summoned to the Executive Council and informed them that if the Judges should differ the verdict would still stand for the plaintiff, Sir W. Denison was inclined to suspend the Chief Justice and appoint a substitute. The Executive Council shrunk from so violent a procedure. The Governor asked Pedder to take leave of absence. "Were I to do so," he replied, "I should, it appears to me, be guilty of a shameful abandonment of my official duty. I should be for ever after disgraced, and *ipso facto* render myself unworthy of holding the lowest office or employment which it is in Her Majesty's power to bestow on a subject."[1]

The brave Judge, who had been accused in by-gone years of pliability when he complied with lawful measures proposed by Colonel Arthur, was then called upon to answer a charge of "neglect of duty in having failed within the prescribed time to certify against the (Dog Act) 10 Vict. No. 5, on the ground of

[1] Parliamentary Papers, vol. xliii. 1848.

repugnancy." He denied the charge, and claimed to be heard in person or by counsel. Counsel was denied to him. He answered, under protest, in writing. By argument, and by fact, his answer was triumphant. The question of repugnancy was not obvious. The object of the Dog Act was ostensibly to abate a nuisance, not to impose a tax. After two days' argument in Court, Pedder had come to the conclusion that the Act was repugnant to the Constitution Act. Was it legitimate to assume that he had in 1846 neglected his duty in not certifying against the Act? "Does a Judge by accepting office undertake for infallibility? or is more to be expected of a Colonial Judge than of those eminent persons who constitute the Courts in Westminster Hall? Has no one of those great magistrates been ever heard to admit that after argument he has felt himself compelled to give up opinions long before entertained?" He incisively pointed out that neither the Attorney-General, who drew the Act, nor the second Judge had seen the repugnancy. Was the charge of neglect to comprehend them? He earnestly prayed for speedy judgment, declaring whether he was "not guilty, or guilty of the high misdemeanour charged against" him.

In a wordy minute the Governor in Executive Council endeavoured to justify the attempted wrong; but did not venture to communicate feeble sophistries to the Judge as part of the decision. He was informed: "It is gratifying to His Excellency and Council to be enabled, after a careful perusal of the answer, to record their unanimous opinion that his Honour is not guilty of the neglect of duty so charged against him." This was on the 21st January, 1848. Opportunely the Queen's warrant re-appointing the "patriotic six" to the Legislative Council reached the colony after the question of invalidity of Acts had been raised by the decision on the Dog Act. The new and able Solicitor-General reported no less than fifteen other Acts as voided by it, and nearly thirty others as made questionable.

Sir W. Denison called his Councillors together and read them a long harangue on the 26th January. The feeling of opposition in the colony "to all statutory enactments" was "a fearful social evil." A Bill to remove doubts respecting the validity and legality of colonial enactments had been prepared as a "Legisla-

tive remedy." Petitions against the Bill were presented. The Chief Justice, Captain Fenton, Mr. Dry, and Mr. Gregson, opposed, or sought to modify it. The second reading was carried by nine votes against five. By eight votes against six a proposal by the Chief Justice to recommit the Bill with a view to save the rights of all persons in the Courts prior to the coming into operation of the Bill, was rejected. Mr. Dry's attempt to secure an adjournment for one day was similarly outvoted, and the Bill was passed on the 7th February. It made valid all Acts, not certified by the Judges as repugnant, within fourteen days after enrolment, "any repugnancy or supposed repugnancy" to the Constitution Act, or charter, or letters patent, "or to the laws of England in any wise notwithstanding."

As it was, under the 22nd section of the Constitution Act, competent for the Governor in Council to adhere to a law, after receiving an adverse representation from the Judges, the Doubts Act prevailed, although the Chief Justice certified that it was repugnant to the Constitution Act. By eight votes against five the Council adhered to their enactment[1] on 10th March, 1848. There was excitement out of doors against it, and one member of the patriotic six, who supported it, was warned that he would be "tarred and feathered." The embers of the contest with Sir Eardley Wilmot had warmth in them, and to every Englishman it is sweet to avoid individual taxation, although he votes for members who impose it on others. But Sir William Denison was proof against the turmoil. Sir John Pedder was content to let the Governor report to the Secretary of State the gross attack made upon him, and Sir William Denison, though ready to do wrong, was not without anxiety as to the manner in which that wrong would be viewed in England.

He published[2] letters in which his wife wrote of "a quaking feeling of terror," when the time for arrival of despatches was near. "I am afraid I shall have reason for a renewal of alarms till we have heard the decision of the Home Government, not only on the Judge Montagu case, but on the subsequent *démêlé* with the Chief Justice, and last, not least, on the Doubts Bill." The

[1] Parliamentary Papers, vol. xxxv. 1849. *Tit.* 'Illegal Taxation Ordinances, Van Diemen's Land.'

[2] 'Varieties of Viceregal Life.'

good lady, however, took comfort in the conviction that her husband had "conscientiously done his best." When the despatch arrived in November 1848, it rebuked Sir W. Denison for having "acted rashly and unadvisedly," and as he read it aloud, Lady Denison, who had vainly hoped that "the chief of the blame would fall on Sir John Pedder," expected that the final sentence would be her husband's recall. But Earl Grey knew not where to find so promising a ruler for the island, and concluded by a general expression of confidence in the zeal and ability of the Governor, who promptly communicated the result in a friendly note to Sir John Pedder.

A number of merchants in Hobart Town addressed, in March 1848, a vigorous remonstrance against Sir W. Denison's financial measures, his insults to the merchants, his demeanour towards "Sir John Pedder, whose high character has for many years commanded the respect of the whole community." They prayed that a "15 per cent. Ordinance" might not be sanctioned. It was an Act passed by Sir Eardley Wilmot to abolish certain differential duties of customs. It imposed on imports from New South Wales the same rate of duty as was payable on imports from other British colonies or possessions. Certain goods imported from Sydney had previously, together with imports from the United Kingdom, escaped duties. The exemption dated from 1834, and had been confirmed by subsequent legislation. Sir Eardley removed it as regarded "the growth, produce, or manufacture of New South Wales." Earl Grey in February 1849 communicated Her Majesty's approval of the Act. Nearly sixteen hundred colonists had in 1848 vehemently assailed Sir William Denison for "open invasion of the independence of the Bench"—"odious and revolting, . . . which if allowed to pass unpunished must terminate in the utter subversion of all confidence in the administration of justice." Earl Grey desired the Governor to inform them "that Her Majesty was not pleased to issue any directions with respect to their prayer."

The limited area of the island, and the fact that before the occupation of Crown lands became a burning question in other colonies, freehold homesteads were sprinkled from north to south, averted the evils which were to afflict New South Wales and Victoria. In 1847 it was reported that, out of fourteen and a half

millions of acres then stated as the area of the island, less than a million and a quarter were held under depasturing licenses, while nearly three millions of acres had become private property at that date. There were 1,833,866 sheep, and only 82,194 cattle, and they found sufficient food. Moreover, there were no illimitable plains to invite the grazier as on the mainland.

The condition of South Australia, between the arrival of Captain Grey (in 1841), and the year 1847, stands in marked contrast with that of the neighbouring colonies. The lands originally alienated were bought in England by means of the superfluities of the buyers. It was the inordinate traffic amongst themselves in Adelaide that engrossed the colonists in land speculations, and diverted them from the true pursuits of a young settlement. They had gone to colonize waste lands. They had gambled with town and surburban allotments, as if the city of the future could grow without labour and independently of rural support. When Captain Grey arrived he had intended to dispose of Crown property to meet pressing claims on the Government. No sale was possible. Speculation had been drowned in its own excesses. He turned to the bank, which, like a solitary vulture, seemed to clutch the remnants of the slain. He was offered £10,000 on his personal security at a rate of 12 per cent. interest.

He preferred to leave unsettled the claims created under Gawler's government, at least until he could know the result of a pending Parliamentary inquiry. The principal inhabitants besought him to settle the most urgent claims. He was immoveable. There were some wants which necessity as well as charity compelled him to meet. The Colonization Commissioners had, under sanction in England, guaranteed employment, at a reduced rate of wages, to immigrants who could not obtain hire. Numbers of immigrants demanded as a right what had been promised as an indulgence. They would not seek labour in the country when they could claim employment in Adelaide. Grey gave employment, but reduced the wages, from 1*s.* 6*d.* a day with rations, to 1*s.* 2*d.* a day without them. There were tumultuous meetings, and hundreds of men marched to the small "Government House." Violence was threatened; but

Grey was firm. He could afford "the threats of pain and ruin to despise." When his salary was but £1000 a year, he gave more than a third of it to relieve distress in Adelaide. He found estimates for an expenditure of £94,000 for the year 1842. He reduced the amount to £34,000. In one department, the 'Storekeeper's,' he swept the charge of £23,748 almost bodily away, leaving an estimate of only £340. Authorized to prevent decay of works already commenced, he borrowed £3000 from the Government at Sydney. But he would not consent to prosecute works in Adelaide, merely to give employment. He strove to press the labourers into the country. He employed them on roads and bridges. The Great Eastern Road across the Mount Lofty Range bore witness to his wisdom.

In a brief space the insolvent community, which had been importing food, was in a position to export it. As soon as Grey learned that the bills drawn by Gawler were being paid in England, he assumed that the outstanding debts left by Gawler might be similarly met, and he drew accordingly for £35,000, the claims being cognate to those already recognized. The English Government refused to honour the Bills, on the ground that before the liabilities were contracted, Gawler had received peremptory orders to avoid contracting them.

Lord Stanley was bitterly assailed for his refusal. But he was able to prove not only that Colonel Gawler had contravened instructions in incurring the debts, but that Grey himself was warned not to draw bills "without having previously received authority to do so." He was able also to point to the new Constitution Act, 1842 (5 and 6 Vict., cap. 61), already alluded to, which granted £155,000 "in aid of the revenue of South Australia," and abandoned all claim "for the repayment thereof and for interest thereon," and which made it lawful for the local government to issue debentures for outstanding debts.[1]

[1] Lord Stanley did not write without reflection or forethought. In July, 1843, he said on the subject of "outstanding bills": "I should wish further to observe, that in the event of any proceedings being instituted in any of the colonial tribunals having for their object to attach to you a personal liability for the payment of any of the bills drawn on the Lords of the Treasury, it will be your duty to direct that the defence be conducted in such a manner as may most effectually raise on the record of the proceedings how far, as Governor of the colony, you are or can be amenable to them.

To the influence of Wakefield's disciples and their friends in Parliament may perhaps be ascribed those special features in the statute which at this early period in the history of the colony proffered a more comprehensive system of self-government than any then extant in the southern hemisphere. One section enacted that Her Majesty might constitute a nominee Legislature consisting of the Governor and at least seven other members. But there were alternatives. The sixth section made it lawful "to convene a general assembly to be elected by the freeholders and other inhabitants," by means of which, with a Council appointed by the Crown, the Governor might legislate. As an alternative it was made lawful to constitute a general assembly, partly nominated and partly elected like the Legislative House created by Act of Parliament (on the same day, 30th July, 1842) in Sydney. The fifth section, nevertheless, provided a third form of government—the one which had existed from 1823 to 1842 in Sydney and in Hobart Town—by a Legislature consisting of the Governor and a number of persons nominated by the Crown. Seven was the minimum fixed by law for South Australia. Lord Stanley told the Governor (6th September, 1842), that he concurred in the opinion of a Select Committee of the House, that before introducing the element of popular representation, it "should be made evident that the internal resources of the colony are fully adequate to provide for its own expenditure, and also that permanent provision should be made for certain fixed and definite expenses on account of the civil government of the colony." The selection of the seven nominees was left entirely to the Governor. In effect, the nominee House was adopted. It consisted of the Governor, of three official, and of four non-official members. Before the new Constitution Act reached the colony he had done much to remedy the anarchy which he was sent to remove.

At the end of 1841, searching retrenchment and activity had reduced chaos to order. Prosperity was yet to come, but a

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You will further instruct your legal agents to adopt the necessary steps for bringing that question by way of appeal before the Judicial Committee of the Privy Council, if the judgment of the Court should in any manner affirm or support the opinion that any such personal liability really attaches to you."

ruinous career had been arrested. The survey department had been kept vigorously at its work by the Surveyor-General (Captain Frome), and more than 300,000 acres were open for selection in the country districts, the cost of survey having been reduced to $7\frac{1}{4}d.$ per acre. Within a year of his arrival the Governor had put the ship of State in order. Assailed in the colony for hard-hearted economy, he was thwarted by the Colonial Office in the one measure of relief to which he thought the Government was pledged. He was consoled by being told that Lord Stanley still had confidence in his discretion. Meetings in the colony demanded his recall. All misery was laid at his door. In 1842 insolvency followed insolvency, and more than a third of the houses in Adelaide were deserted. Their former occupants had been forced into the country, and were subduing the earth. In 1843 the end had been reached. There was even a scarcity of labourers, and Grey encouraged the soldiers to assist in gathering in the harvest. All able-bodied men were employed, and Grey advised the revival of immigration, which Lord Stanley shrunk from. An unexpected relief flowed in from New South Wales, where the newly-arriving immigrants found a temporary glut in the labour market arising from the absolute inability of the settlers to pay wages during depression and panic. No less than nine hundred persons found their way to Adelaide. But ardent colonists were not satisfied with thus reaping where they had not sown. A grievance was found in Lord Stanley's refusal to make good the amount taken from the emigration fund, £87,000, to meet some of Colonel Gawler's bills. The fact that over and above that sum the British Parliament had made grants to relieve the colony was made light of. Newspapers and books were unanimous in declaiming that the colonists were *bonâ fide* creditors, and that they were being defrauded. They scorned the idea that Gawler's overdrafts ought to be met by any portion of the land fund; that colonial excess should be met by colonial paring. Meanwhile they prospered. In this instance simple figures will need no explanation. The earnings of the colonists no longer flowed out in order to obtain food. Butter and cheese were exported in 1842. Wheat, other grain, and flour followed in 1843. The distribution of the population was the all-

sufficient explanation. In 1841 Grey found more than eight thousand persons in Adelaide, and six thousand in rural districts. In 1843 there were only six thousand in Adelaide, while in the rural districts there were more than eleven thousand. There were 2500 acres under cultivation in 1840. In 1843 there were more than 8000. The exports were steadily increasing. The revenue was recovering from an interval of depression. The expenditure in 1843 was but a sixth part of that of 1840.

The boon of the new constitution proffered from England was concurrent with a discovery which was to raise South Australia from insignificance after Governor Grey had saved her from ruin. A son of Captain C. H. Bagot in 1842 picked up at Kapunda on his father's sheep run, amongst the low spurs from the Mount Lofty Range of Flinders, about forty miles from Adelaide, some specimens of copper ore, near the river Light which runs into the gulf of St. Vincent. He gave them to his father. Some time afterwards (1843) Mr. Francis Dutton, a friend of Captain Bagot, stumbled upon a neighbouring spot and found similar specimens. He confided his secret to Captain Bagot, and found he had been anticipated. The land was unsurveyed. Lord Stanley's Land Act of 1842 (5 and 6 Vict., cap. 36) applied to South Australia as well as other Australian colonies, and copper had never been reserved in Crown grants. If the discoverers could but secure the freehold their fortunes would be made. They quietly applied for a survey, complied with customary forms, and became, in due time, the owners of eighty acres bought at the upset price of £1 per acre. They broke off specimens of the weather-worn outcrop of the ore, and ascertained that their average yield in England was 23 per cent. of copper. In 1844 they employed about ten miners in the month. For 252 tons of ore they obtained more than £6000. They bought for £2210 an adjacent block of a hundred acres, which other speculators caused to be surveyed. They stimulated hope in all colonists. Mr. Dutton went to England early in 1845, and published an account of the colony.[1]

Remunerative employment of capital stirred the enterprise of other colonies. Capital and labour flowed in upon the hitherto

[1] 'South Australia and its Mines.' London: 1846.

despised settlement. Commercial success breeds activity of mind, and the colonists were not backward in demanding scope for their political aspirations. Repeatedly they asked for a share in making their own laws, and received the reply that before exercising financial control they should make it plain that the internal resources of the colony sufficed for its expenditure. The era pointed at in the reply was, in spite of past mismanagement, rapidly approaching. In 1844 the deficiency in the year was only £3000. In 1840 it had been £141,000.

When the new Constitution Act was put in operation in 1843, the Governor nominated three official and four non-official legislators. A. M. Mundy (Colonial Secretary), W. Smillie (the acting Advocate-General), and Captain Sturt (the explorer), who was Registrar-General, were the official members. Messrs. T. S. O'Halloran, T. Williams, J. Morphett, and G. F. Dashwood were the first unofficial Councillors.[1] After a brief period the names of Williams and Dashwood gave way to those of Hagen, and Captain Bagot, the lucky proprietor at Kapunda. The public were admitted to hear the debates in the Council. In 1842 the Coporation of Adelaide and others, and in 1844 six hundred petitioners sought the privilege of electing their own representatives; but Lord Stanley again postponed the subject until there might be substantial guarantees of stability in the colony.

In May 1845 there was a further discovery of mineral wealth. A shepherd named Pickitt found the outcrop of the far-famed Burra ores about ninety miles from Adelaide, and half that distance from Kapunda. Both the mines were on the same system of hills, and a line from the Burra to Adelaide intersected Kapunda. Limestone abounded at the Burra, and the practical miners who worked there declared that the copper was not found as elsewhere in a regular lode, but as a mass. Speculators determined to enter upon the land on a large scale, but at a cheap rate. If the land should be put up in ordinary blocks of eighty or a hundred acres competition would step in. If it could be claimed under the 15th section of the Land Act (5 and 6 Vict., cap. 36), twenty thousand acres could be secured for twenty thousand pounds, as a 'special survey' block. The loss

[1] Parliamentary Papers, vol. xxix. 1846.

to the revenue was nothing in the eyes of speculators who thought of their own pockets. But there was a preliminary difficulty. The Treasury would demand cash, and there were not so many pounds of cash in the land at the control of any band of speculators. It was necessary to make the conspiracy so large that the whole colony became an accomplice in robbing itself. There were two associations, but neither of them could scrape together the required sum. One of them comprised the lucky proprietary of the Kapunda mine, with a few others. They were called "the nobs,"[1] and became a Princess Royal Mining Company. Tradespeople and others formed a South Australian Mining Association, and they were called "the snobs."

As neither "nobs" nor "snobs" could raise £20,000, they agreed to combine their resources so as to outwit the Treasury in a legal manner, and thus obtain the land. Their mutual estimate of their dignity demanded that the alliance should be but temporary, and it was arranged that on payment for the block, the high contracting parties should willingly suffer repulsion; that when the survey should be completed the land should be divided by drawing a line through it from east to west, and that lots should be drawn for the separated blocks. From every petty hoard in the colony sovereigns were gathered until the purchase-money was scraped together, and the land was bought. The "snobs" drew that which became the Burra-Burra Mine, and yielded more than ten thousand tons of ore in a year. In 1862 it was calculated that the Company had divided £677,600 as profits, and added £150,000 to their capital, out of profits. The "nobs" were less fortunate. They procured some ore, but after spending £14,000 and obtaining about half that sum in returns, they disbanded themselves, and their luckless lot was sold for eighteen shillings an acre to become, for a time, at least, a sheep-walk.

Governor Grey saw the struggle to obtain the Burra-Burra

[1] *Nobili: snobili: mobili.* The last of these exotics has long forced its way from *argot* into ordinary conversation and books. Thackeray made the second of them classic. The first was, in South Australia, in such pride of place that no colonist doubted that it would live in the front rank of language for ever.

land, and did not arrest it. It is possible that if Sir George Gipps had been in South Australia he would have taken upon himself to have foiled the coalition. The Land Act of 1842 had not so tied down a Governor that he was powerless; and Gipps had, in 1840, refused to obey the special instructions of Lord John Russell when he saw that obedience would involve a loss of hundreds of thousands of pounds upon lands adjacent to Melbourne, Geelong, and Portland. Grey was well aware that speculation would tend to fill his treasury; for he reported in May 1845, that the revenue exceeded the expenditure, and that the land fund, stimulated by speculative purchases, was likely to produce untold sums paid for lands in hilly districts previously deemed barren and worthless.

It would be tedious to enumerate the various mines which were afterwards discovered. It is sufficient to say here that after the Burra-Burra poured out its tons of ore hope and activity reigned in the land.[1] Eventually other copper mines were found, and lead and bismuth were also procured. The repulsive wastes beyond Spencer's Gulf might furnish wealth. To the north, north-east, and east of Port Augusta, and far along the Flinders Range, copper was so abundant that it seemed to tempt adventurers to test the cost of procuring and smelting the ore. Before mineral wealth had swollen the purses and expanded the hearts of the colonists, they had begun to value the results of the Governor's labours. The population forced into the country extracted the fruits of the earth. Cultivation increased more than four-fold between 1841 and 1845; sheep more than two-fold; cattle nearly a hundred per cent. Many former opponents admitted that the Governor had blessed them by teaching self-reliance; and when, to invite commerce, he proposed a Bill to abolish all rates, dues, and charges on shipping, his Council unanimously approved it.

A public meeting was called to thank him for his "able and diligent administration of the public affairs." A laudatory address was carried by acclamation.[2] In the midst of his success

[1] It was not until 1860-1 that about 80 miles to the west of the Kapunda and Burra Mines, at the neck of Yorke's Peninsula facing Spencer's Gulf, the Wallaroo and Moonta Mines were found. Eventually they eclipsed the fame of the Burra-Burra.

[2] 'The Adelaide Observer' (30th January, 1847) pointed out as the result of

he was selected by Lord Stanley to govern New Zealand. To his honour it may be said that he was not forgetful of his duty to the natives. He appointed E. J. Eyre (the explorer) resident magistrate of the Murray district, "where frightful scenes of bloodshed, rapine, and hostility had been of frequent occurrence." Eyre was conversant with the native character, firm, and kind. During the three years in which he was resident at Moorunde, not a single case of agression by the natives occurred, and "a district once considered the wildest and most dangerous, was when Eyre left it, in November 1844, looked upon as one of the most peaceable and orderly in the province."[1]

To Mr. Moorhouse, the protector of the aborigines, much credit was ascribed by Eyre and others. Mr. Moorhouse remained protector of the aborigines until 1857, and was succeeded by Mr. Walker, who held office until his death in 1868. To both these gentlemen, England, the colony, and the natives, were greatly indebted for the fact that the editor of 'South Australian Folk Lore' could declare (1879) that the "instances of ill-treatment of the aborigines by white settlers, or of outrages by natives, have been so few and unimportant in the history of South Australia." The Legislature also deserves credit for humanity. Mr. Taplin told no more than the truth when he said:[2] "A determined spirit of humanity has always been evinced by the leading men of the colony, and they have supported the efforts of those whose duty it was officially to care for the aborigines." The student will recognize the fact that unless the leading men had been seconded by the Legislature their own efforts would have been futile. Land and money were awarded with no niggard hand.

Captain Grey's successor, Colonel F. H. Robe, summoned his Council in June, 1846, and congratulated them on the prosperity of the province. He paved the way for differences by entreating them to "let it be no longer a reproach to the Governor and the

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Grey's management that there was at the end of 1846 a surplus of £21,391, the increase of revenue having been in that year at the rate of nearly 40 per cent. on that of 1845. In 1845 it was £36,000; in 1846, £48,000.

[1] Vol. ii. p. 149. 'Discoveries in Central Australia.' E. J. Eyre. London: 1845.

[2] 'South Australian Aboriginal Folk Lore.' Adelaide: 1879.

legislative body," that they were more backward than other colonies in providing for the ordinances of religion. To reproach a community was not a step towards co-operation, and resentment followed. Public meetings were held at which the opponents of endowment of religion outnumbered its friends. Nevertheless Robe succeeded in passing his Bill. To an adverse deputation which waited upon him with a memorial, he was notably brief. They had expected to hear his reasons, and overwhelm him with their own. He received their memorial, and said, "I have no remarks to make, gentlemen." They were like an army suddenly deprived of weapons.

But though he carried his Religious Endowment Bill, he was thwarted in a proposal to impose a tax on minerals. The South Australians had in 1845 objected to the clauses in a new Land Bill (proposed by Mr. Hope, Under-Secretary for the Colonies), which threatened to reserve minerals and to impose royalties. The Sheriff had declined to call a meeting, and an unofficial member of the nominated Legislative Council, Bagot, called one. A petition had been adopted, in which the reservation of minerals and imposition of royalties were denounced as a violation of the compact under which the colonists had immigrated.

Nevertheless, in September 1846, Governor Robe pushed forward his Bill. The official nominees supported, the non-official opposed him. He himself spoke earnestly. An amendment to postpone the Bill for six months was lost by the vote and the casting vote of the Governor. On the motion to go into Committee the four non-official members left the Council, which was thus deprived of a quorum. The "patriotic four," as they were called, were as popular as their types had been in Van Diemen's Land. Morphett, Bagot, O'Halloran, and Davenport, were household words for the time. It was believed that Robe was no aspirant for martyrdom, and would give way to the opposition. But those who trod the soil of South Australia contemplated with terror the risk of losing their chance of appropriating its minerals.

All eyes were turned to the prospects of the Crown Land Sales Bill in the English Parliament. The able Governor Gipps had sailed for England, and knowing his tenacity of what he deemed right, men knew not how far his strong will would

prevail if his advice should be asked upon the question of Crown lands.

Before he arrived in England the Ministry of Peel had given place to that of Lord John Russell, and Earl Grey had become Secretary of State for the Colonies. As a theorist on colonization, and an advocate for the continuance of transportation, his admirers expected great things from him. Charles Buller was relied upon to aid him, for there was a lurking feeling among the well-informed that whether from perversity, or want of discretion, Earl Grey would fail to be a great statesman. With pernicious promptitude (and lamentable deflection from the theory of Gibbon Wakefield to which he once professed attachment) the new Secretary of State in a short Act (9 and 10 Vict. cap. 104), which he called an "improvement in detail," abandoned the position so essential to Wakefield's system, that while no land should be alienated without a sufficient price, the annual pastures might be cropped freely so long as no title to the soil was conferred by regulations for the use of the pasturage. The Act was passed before Gipps reached England. It did not in terms abrogate the provisions of Lord Stanley's Crown Lands Sale Act (5 and 6 Vict. cap. 36), but it was made lawful (sec. 6) to regulate pre-emption by the holders of runs held under license or lease, the terms of which might extend over fourteen years. It is difficult to discover a rule by which to judge Earl Grey's conduct. He professed the utmost confidence in Charles Buller, who was the faithful follower of Gibbon Wakefield. Another disciple, Mr. Hawes, became Under-Secretary in the Colonial Office. It seemed that at last the new colonization theory was to be tested thoroughly. But between Wakefield and Earl Grey there was a gulf. It was alleged by the former that public and private feud enrankled the feelings of the latter. Earl Grey and Lord Durham were brothers-in-law, and when Lord Durham's Canadian mission ended in ignominy, Lord Durham's friends, one of whom was Wakefield, ascribed the disgrace to the abandonment of Durham by the Melbourne Cabinet in which Earl Grey (then Lord Howick) had a place. *Quæque apud concordes vincula caritatis incitamenta irarum apud infensos erant.* Wakefield returned

the Earl's feelings, and has recorded the violent and "murderous attack" made upon him by the Earl before a Committee, but triumphantly foiled.

At the last moment a minor provocation occurred. The New Zealand Company were in desperate straits. They had in their parliamentary battles and intrigues secretly and openly aided Earl Grey when acting as their champion. Wakefield, "having (he said) regard to his jealous disposition," supplied weapons, but did not stamp them with his own name. Then arrived the hour when, having defeated in the Commons the assaults of Buller and others upon Lord Stanley, Peel was himself defeated by treacherous combination. In the brief interval during which Mr. Gladstone had held the seals of the Colonial Office (on Lord Stanley's voluntary retirement) Gibbon Wakefield had (not without misgivings lest he should irritate Earl Grey) submitted to Mr. Gladstone a scheme for settling New Zealand affairs. Mr. Gladstone went out of office, and Earl Grey came in, jaundiced against Wakefield. Nevertheless, Charles Buller procured at his own house a meeting between the two. Wakefield averred that the Earl's conduct was "perfectly brutal." The letter to Gladstone was not to be forgiven. Buller strove in vain to pacify the Earl. Such, according to Wakefield, was the state of affairs when Earl Grey, in August 1846, proposed to the Lords the second reading of the Australian Waste Lands Bill.

If he had comprehended, he was in no humour to profit by Wakefield's ideas as to the temporary use of natural pastures. He talked of the difficulty under the former system of free grants, of preventing "large tracts from falling into the hands of persons who made no proper use of them." He descanted upon immigration, upon exports and imports. In the interior of New South Wales "the population now consisted of persons of both sexes and all ages." They were without schools, clergymen, or places of worship. A change was necessary "to prevent their continuing in a state of rudest barbarism. . . ."

"It was thought by his predecessors in office and by himself, that it would be expedient to allow the squatters and stockfeeders some more permanent interest in the land than they at present enjoyed . . . leases in fact for such a period as would induce them to build houses,

form tanks, and dig wells. Noble lords might not be aware of it; but the fact was that the land in Australia was greatly affected in its capability of supporting stock by the quantity of water which it was possible within a reasonable distance to procure."

Leases for less periods than fourteen years would be given. "The late Governor (Gipps) had recommended [1] eight years, and that would probably be the average length of lease." A right of pre-emption "was to be given to the holders, subject to arbitration respecting value." Her Majesty would be empowered to make regulations under the Act. Lord Brougham "objected to giving the power to the Crown of legislating all the year round," but Lord Lyttleton approved of it, and with only a further remark from the Duke of Grafton about applying some portion of the revenue to religious purposes, the Bill passed through the House of Lords. In the Commons, Mr. Hume proposed to extend the leases to twenty-one years, but Mr. Hawes would not consent. Mr. Scott, as agent for New South Wales, supported Hume, but accepted the Bill gladly, and declared that never had any previous Government been so courteous as Lord John Russell's. Not seeing that his own clients in the first instance, and eventually the colony generally, could benefit by Gibbon Wakefield's principle of free, or comparatively free, pasturage on waste lands, coupled with judicious sales of land in settled districts as population might justify

[1] It was disingenuous to quote Gipps as having "recommended" any leases. He opposed them while he could do so. When he yielded on the question of pre-emption of limited areas he declined the "responsibility of recommending the measure," and retained his objection to leases "of any duration longer than a year." If he deserved blame it was because by the mode of dealing with an interest on which all colonists depended he banded the whole community in its favour, and demands were made in the colony and sanctioned by Earl Grey which were opposed to the advice of Gipps, and were unjustly described as made on his recommendation. (*Vide* in Parliamentary Papers, vol. xxix., 1846, Sir G. Gipps' memorandum laid before his Executive Council.) It is true that, in 1846, Sir G. Gipps thought leases "must be conceded." In like manner Lord Stanley (August 1845) wrote: "Assuming that leases are to be conceded, I would be glad of any suggestions you can offer to diminish the risk attendant upon the concession of them" (Despatch to Gipps). In Mr. Hope's Bill the maximum lease permissible was to be for seven years. Earl Grey expanded the term to fourteen years. (9 and 10 Vict. cap. 104, 1846; and Orders in Council, 9th March, 1847.)

application of land to agriculture, Mr. Scott consented to a measure which was to sow seeds of abundant discord. Mr. Scott was acting for those who denounced bitterly Wakefield's ideas. He railed "at the unfortunate measure of raising the price of land from 5*s.* to 20*s.* per acre," which was "ruining the Australian colonies by the entire cessation it has caused to emigration." Wakefield's "sufficient price was absolute prohibition." He implored Mr. Hawes to repeal the Land Sales Act, which made a pound sterling the minimum price, and was "repugnant to reason and common sense." Mr. Hawes contented himself with quoting a despatch (1844) from Sir George Gipps, asserting that "the high price of land and the squatting system naturally go together—the one supports the other, and either would be indefensible without the other. Together they form, as far as I can judge, the best system in which the domain of the Crown can under existing circumstances be administered." There was one thing wanting;—firmness to adhere to the principle involved. That firmness, or the common sense on which it should have rested, was wanting. Earl Grey's Bill was to exasperate the remainder of the community against the squatters because it "locked up the land,"—was to lead to exhaustion of many honest buyers in their endeavours to secure the freehold, to corruption in the departments in favouring intrigues to obtain it,—and in the end it was to squander a magnificent territory which might have yielded untold millions for the construction of public works and the promotion of the public good. The theory which Earl Grey did not appreciate, or wilfully deserted, was not likely to prevail in a community where its tendency was to check the cupidity of those who sought to possess themselves of the soil without paying for it. The glances of the covetous became greedier and greedier, their numbers were more and more multiplied, till in the fulness of time the pernicious cry of "free selection before survey" was echoed and enforced.

The evils which Wakefield foresaw, and Sir George Gipps dreaded, were brought about. Scattered afar, remote from schools, from churches, from mellowing influences of society selectors spread like harpies clutching each for himself at that which should have benefited all. Land which would

have realized £5 or even £20 an acre was seized upon condition of paying two shillings an acre for only a few years. The treasury was robbed, and there was no guarantee for the fulfilment of the condition. All these evils the pragmatic Earl Grey fostered. His new law was not destined to work so injuriously in South Australia as in New South Wales. The energy of the former had already been turned to agriculture and mining. The colonists were relieved when they found that the Act did not, like the Bill of 1845 (Mr. Hope's), menace their mineral rights. They had greater reason to be thankful that their public officers and Governor Young declined to use the power (conferred by the Act) to subject runs to leases which would exempt them from sale when required for public advantage. But Governor Robe, though he could not wreak his will into law, anticipated the tactics of a greater man, who, in 1871, unable to carry part of an Army Bill, betrayed a Parliament by resorting to prerogative to determine a question previously discussed in the Legislature.

On the 4th March, 1846, he announced that after that date there would be reserved as royalty one-fifteenth part of all minerals raised from lands alienated by the Crown. The forms of grant were altered accordingly. His conduct provoked a greater storm than Mr. Gladstone's imitation of it. If the subject were fit to be submitted in shape of a Bill, the Parliamentary difficulty ought not to have been solved by a resort to prerogative. If it were a proper subject for exercise of prerogative it ought not to have been remitted to Parliament. To resort to Parliament, and, when defeated, to fly to prerogative, was a defiance of all rules, constitutional or becoming. The Whig mind had not then been trained to rush into the violent courses adopted in 1871, and in July, 1847, Earl Grey instructed Colonel Robe, to "refrain from adopting legislative, executive, or other means whatsoever for collecting the impost" in the event of the collection "being unequivocally in disfavour with the colonists generally." Of such disfavour there could be no doubt. When the community had with one mind ransacked counting-houses, shop-tills, bottles, and old stockings, for coin to buy the Burra-Burra mine at the rate of a pound an acre, knowing that the result would be to deprive their public treasury of

uncalculated sums, it could not be doubted that it would be equally unanimous against the levy of a royalty. Moreover, the Governor, in fixing the royalty in 1846, had acted under instructions from a former Government, and Earl Grey's self-esteem was not injured by abandoning the proposal of another. Colonel Robe was recalled, and Sir H. E. F. Young was sent from the Eastern Division of the Cape of Good Hope to South Australia, where he arrived in August 1848. Those who denounced Colonel Robe admitted that he was estimable as a man. As a Governor he paid the penalty of failure. Meantime the validity of the new form of Crown grant had been tested in the Supreme Court, and it had been declared that the "sole legal form" was the one in use before Robe's resort to prerogative. Sir Henry Young brought the subject before his Executive Council a few days after he assumed office. It was determined not to appeal to the Judicial Committee of the Privy Council against the decision of the Court, and (subject to approval by the Secretary of State) to revert to the form of grant in use before the 3rd March. That approval[1] was already on its way. The noble Earl said it gave him "great pleasure" to forward it. In the following year a local ordinance (14th August, 1849) removed the last traces of the strife. It did justice to Colonel Robe by reciting that he had acted "in pursuance of instructions;" it recounted the gracious concession by Her Majesty, "to the expressed wishes of the great body of the community in South Australia," in "the free and entire relinquishment of the said royalty or signiorage," and, to quiet titles granted under the abandoned form of grant, enacted that they should be construed as if no reservations had been made in them. The general career of the active and successful Sir Henry Young will be more conveniently considered elsewhere, but it may be remarked that three months after his arrival he passed an ordinance "to regulate the occupation of Crown lands." He and his advisers avoided the rock upon which others ran.

In accepting the provisions of the Waste Lands' Act of 1846 they guarded in short and simple terms against the evils which were to afflict New South Wales and Victoria. The colony was

[1] Despatch, Earl Grey. 22nd July, 1848. Parliamentary Papers, vol. xxxvii. 1850.

to be divided into two portions, *i.e.* land contained within proclaimed hundreds, and land outside of them. In the latter, land might be leased for pastoral purposes for terms not exceeding fourteen years, but nothing in any such lease was to interfere with the "right of the Governor at any time to sell, reserve, or otherwise dispose of the whole or any part of the land so depastured." On becoming part of a hundred, land contained in any lease ceased to be affected by the lease. The public estate remained free, to be dealt with for the public advantage. The regulations were sanctioned by the Queen, and the Order in Council necessary to give them validity was passed.

Mr. Charles Bonney, the Commissioner of Crown lands, deserves emphatic praise. When called upon to report on the subject, after Earl Grey's Order in Council of March 1847 reached the colony, he defended the principle on which Crown lands should be dealt with.[1] Right of pre-emption was an unnecessary privilege for run-holders, and "calculated to render the regulations objectionable to the rest of the community. Nothing can work better than the system hitherto pursued in this province of allowing any land applied for to be put up to auction." For occupied land of no special value the licensee would be subjected to no competition. In case of special value the public had "a right to the benefit, and not the occupier of the run, who already enjoys the benefit of exclusive possession of a large portion of the public lands." Another Commissioner of Crown lands, J. W. Macdonald, in a joint report with Mr. Bonney, recommended the adoption of these sound principles. The Governor advocated them, and transmitted letters from Captain Bagot and other members of the Legislative Council, who strongly argued in their favour. Earl Grey, fortunately for South Australia, in an interval of discretion advised their sanction by the Queen. On the 19th June, 1850, an Order in Council made at Buckingham Palace gave them the force of law. Squatters in South Australia could become leaseholders, but their temporary tenure was no bar to the sale of any land comprised in their run. No obstacle was thrown in their way if they desired to purchase any portion of their run in order to improve or cultivate it; but they could throw no obstacle in the way of a colonist desirous to buy land,

[1] Parliamentary Papers, vol. xxxvii. p. 22. 1850.

which the Government in the exercise of its discretion should think fit to submit to auction. Pre-emption was not accorded to the lessee, nor could he claim renewal of his lease.

The course adopted in New South Wales was propounded by Earl Grey to Sir Henry Young, with a request that the latter would suggest in what manner the "system applied to New South Wales should be adopted in South Australia."[1] That system accorded leases and renewals of leases, and pre-emption by the squatter of the whole of his run. The eminent Roundell Palmer (afterwards Lord Selborne) gave a legal opinion to the effect that a squatter had a clear and indisputable right to his lease, and that the Governor had no power to withdraw any part of a run "for the purposes of sale to private persons." It might seem incredible to a person ignorant of Earl Grey's protervity that the "system applied to New South Wales" was declared by him to be analogous in principle to that deliberately preferred in South Australia, and supported by elaborate documents transmitted by Governor Young. Some might think that in obtaining Her Majesty's sanction for the South Australian system the Earl was unconscious of the principles involved in it. If so, his ignorance was a greater blessing then than was ever his knowledge. It is certain that in 1853 he declared[2] that "regulations different in form, but the same in principle (as those in New South Wales), were also established under the authority of the Act of Parliament in South and Western Australia." What he told Sir Henry Young at the time was that he "readily adopted the opinions" of the Governor, and of "the various high authorities consulted" by him.

At Western Australia the word of a Secretary of State was all-powerful. Governor Fitzgerald appointed "a Committee of some members of the Executive and Legislative Councils, with certain other settlers and landed proprietors of experience and sound judgment, to frame regulations." The regulations were sent to England. A curious illustration of opinion in the struggling community was shown in the fact that although a public

[1] Parliamentary Papers, vol. xxxvii. 1850. Sir Henry Young to Earl Grey, 23rd February, 1849.

[2] 'The Colonial Policy of the Administration of Lord John Russell,' vol. i. p. 305. By Earl Grey. Bentley. London: 1853.

meeting was convened to consider the recommendations of the Committee, and condemned many of them, it did not repudiate a provision to give option of purchase to a lessee. So convinced were the few dwellers in the West that the town could not hope to prosper by injuring the squatters, that the meeting recommended that, during continuance of a lease, the land should "not be open to purchase by any other person or persons, except the lessee thereof," and that the lessee might purchase in the mean time.

The public meeting was held in July 1849, and the mere resolutions are eloquent of distress. The propositions of the Governor's Committee would "cause the gradual depopulation of the settlement." The "distressed circumstances of the settlers, the continued high rate of shepherds' wages, the low price of wool, made it impossible for the stockholders to continue paying the present exorbitant and ruinous charge for depasturing licenses." The Governor was "strenuously entreated" to reduce the scale till orders might arrive from England.

It was not the first time that abandonment of the land had been seriously debated. Some had abandoned it. They sought higher wages at South Australian mines. They who remained watched wistfully the departers, and the Governor lamented that four hundred labourers had migrated within five years. They were not numerous enough to fill a ship, but they left the market bare. They were about a sixth part of the total male population, including old men and children. When, in the end of 1841, the 'Ganges' had arrived with "nearly a hundred male and female immigrants . . . brought out at the desire and expense of private persons," Governor Hutt had written a despatch of gratulation. He and his advisers, eager to retain labourers imported by the local Government, passed an Act providing that a residence of one year should discharge a moiety of the debt of the immigrant, and two years' residence should discharge the whole. Unless the cost of his passage were discharged by repayment in cash, or by residence, the immigrant could not emigrate. The Government was barred from suing a debtor "unless there be good reason to suppose that he or she is about to leave the colony" within two years after arrival therein. Lord Stanley, objecting to the Act on principle, un-

graciously condemned it. It was "best that each colony should depend on its intrinsic advantages for the retention, during at least a reasonable period, of the people whose introduction has been defrayed from the public funds. . . . In practice it would be open to great objections, while the necessity for it is perhaps rather supposed than real."

Men who saw their nominal possessions endangered by the want of persons to tend their scanty flocks resented Lord Stanley's reasoning. They felt the truth of the proverb that only he who wears the shoe knows how it pinches. They had little money, and to pervert what they had into a fund to convey labourers to the South Australian mines, seemed a mockery of their distress. The prices of produce fell. The average rate of tenders for meat for commissariat uses was, in 1839, thirteen pence; in 1844, twopence half-penny. In like manner wheat, in 1839, was twelve shillings; in 1844, less than six shillings a bushel. Governor Hutt wrote (March 1845), that if the creditors had been foreign claimants "nothing would have saved the community from general bankruptcy."

"Mutual kindness and forbearance" had arrested ruin. The engine of the law was not applied to extort payments which were impossible. The debtor was not worth destroying; there was no money. "The sale of Crown lands in this colony for money payments, except as regards town allotments, has ceased." The unfortunate grantees of early days had more land than they could sell, and were starving. About 150 Imperial troops were paid and maintained at a cost of more than £8000 a year, and seemed to circulate a little coveted cash. The Crown land revenue in 1847 was £252. It had been £95 in 1844. The wool exported in 1848 was less than £10,000 in value. It seems like scraping the bones of the dead to trace the decaying condition of the community founded in defiance of economic principles.

But staunch men still laboured at their oars amid the moiling sea. Governor Hutt never flagged. For seven years he presided over the colony. He left in December, 1845. For a year Colonel Clarke officiated until he died, and for more than a year Colonel Irwin acted as administrator—till Captain Fitzgerald, R. N. (who was to rule as long as Governor Hutt), arrived in

August 1848, to take upon him the regular control. His report (April 1849) on the condition of the colony was more hopeful than most men could have made, but indicated rather the resolution of the writer than the prosperity of the place. "With reference to population, notwithstanding emigration to a neighbouring colony to a limited extent, and the abandonment of it by others for various parts of the world, yet have we increased in numbers. It is true the increase is small; but, looking at our past difficulties and the general depression, I do not complain." He said the "population inclusive of military" was 4622, and had increased in one year by 92. There was a disparity of sexes, and "in the most anxious manner" he entreated that "thirty or forty young unmarried females between the ages of eighteen and thirty might be transmitted" to the colony. The revenue had increased somewhat, but it would be more satisfactory if part of it had not been derived from *ad valorem* duties on imported breadstuffs, "which I hope for the credit of our farmers will not again be brought to our ports with advantage." Magnificent timbers, sandal wood, jarrah, and others slept "undisturbed in their native forests for want of a market." Fisheries had yielded "some return." Oil and bone of the value of £4000 had been exported, but there was a want of "vigorous combination," and "much to our discredit foreigners have come into our bays killing fish, crying shame upon our supineness." The cash derived from land sales "has not this year exceeded £411," which "it would be fruitless for this colony to expend in the transmission of emigrants, while the rate of labour-wages rates so high in the other Australian colonies. We should only be paying the passage of emigrants so far on their way either to Sydney or Adelaide." Our gaols are three in number, "at Fremantle a good substantial building, that at Perth ill-adapted and only occupied until our funds enable us to construct a proper and more commodious edifice." At Albany the gaol was substantial but small. There were three small lock-up houses in country districts.

To those who have not observed the elastic consciences of disciples of Escobar, the state of education in Western Australia would be an insoluble problem. While demanding in England, in the name of religious equality, freedom of

action at one time, and concurrent endowment as a consequence, the Church of Rome within her own borders, ere yet "il Ré Galantuomo" reared the banner of Italy in the capital of the Cæsars, rigorously forbade even the private exercise of devotion by a few English or other Protestants. In Ireland the estimable Roman Catholic Archbishop Murray joined in preparing for the national schools text-books from which in combined schools all children might learn some Christian truth. Shortly afterwards the benevolence of Murray was thwarted by less liberal persons, and it was contended that the national schools would be useless unless they could be perverted from national uses. They must be made denominational. The same tortuous impolicy has prevailed in Australia. When Sir Richard Bourke proposed to introduce Lord Stanley's Irish system,—vouched as it was with the names of Whately, of an eminent Presbyterian divine, and of Murray,—the Roman Catholics generally hailed it as a boon. When, in 1848, it was established in Sydney, an upright and honoured Roman Catholic, John Hubert Plunkett, the Attorney-General, became a member of the board appointed to administer it. After a few years, when it was hoped that a separate grant might be extorted from the ignoble needs of ministers mendicant for place, the leaders of the Roman Catholic body denounced the schools which they had solicited from Bourke, and menaced the parents who persisted (as many did) in sending children to them.

Western Australia was in the early stage of these contradictions in 1849. When Captain Fitzgerald arrived the Government school at Perth was conducted on Protestant but moderate principles — "to ensure which, and to avoid cavil, religious instruction in school is forbidden to any clergyman, and confined to the reading the Scripture by the master, without note or comment." Fitzgerald, anxious that his one school should "embrace within its fold all denominations of Christians," and tend to "allay all sectarian bitterness in the rising generation," offered a seat on the general Board of Education to Dr. Brady, the Roman Catholic Bishop, and another "to his clergyman."

Brady repelled the offer on several grounds. He "objected in the first instance to sit with two of the members, Colonel

Irwin the chairman, and Mr. Nash the secretary." He objected to the schoolmaster. "Thirdly and lastly, he objected to any system of education except that conducted on the Irish national system." The Governor "finding it fruitless to hope for union," put a sum on the estimates for separate Roman Catholic schools. A Christian moralist will be shocked to find that the Education Board reported that at that very time out of a total of 917 children (between three and fourteen years of age) only 376 were receiving education. Two hundred and thirty-two were taught at "colonial schools," and one hundred and forty-four at "various schools. Five hundred and forty-one received no instruction.[1]

Of the condition of the aborigines it is only needful to say that, wanting ample means, the Government nevertheless displayed a spirit infinitely more humane than that which prevailed in the East. The good Roman Catholic Bishop Salvado laboured at New Norcia. Mr. and Mrs. Camfield, in a private establishment at King George's Sound, won unqualified admiration of their zeal and success. The Government did not shrink from making it known that they condemned any wrong-doing against the natives. Salvado[2] and his brother Benedictines laid the foundation of their monastery at New Norcia, 1st March, 1847, and deserved and commanded success.

The cry of distress which found so little sympathy in Lord Stanley (when Governor Hutt appealed to him for assistance in preventing the departure of indebted immigrants imported by

[1] In the Parliamentary Papers, vol. xxxiv., 1849, the return shows 239 male and 302 female children as "not publicly taught, but employed at home "idle and not *executed*." Who so grimly foretold the consequence of ill-training I cannot tell. Happily there were 300 children attending Sunday Schools at the time.

[2] Salvado published 'Memorie Storiche dell' Australia particolarmente della Missione Benedettina di Nuova Norcia.' Roma: 1851. In 1879 a French Benedictine, Berengier, reproduced the work in Paris with additions, one of which was a letter from Salvado stating that in 1878, 40 natives were confirmed at one time:—that the disciples at New Norcia never returned to savage life even when quitting New Norcia; and giving examples of their good qualities. "Telle est (says Berengier) la race d'hommes que les Anglais Protestans déclarent incapables de toute civilisation, qu'ils cherchent à exterminer par tous les moyens, et que le Professeur Darwin, avec ses credules adeptes, nous montre comme les descendants directs des chimpanzés et des ourangs-outangs, d'après l'amusante théorie qui veut nous faire tous venir d'un grand singe."

the colony) had been wrung from men who were gradually forced to the conclusion that unless they could artificially retain the labour they might import they would be compelled to shake from their feet the dust, or rather the sand, in which they had toiled for a score of years. They would have no choice but to leave the purgatory which evil counsels had made for them. But they would have to go from it shattered in energy and comfortless as to the future. Labour, pure or impure, was absolutely necessary, or the settlers must die or depart.

It has been often stated that it was in 1849 that the die was cast which made Western Australia a receptacle for British convicts. But the art of its necessities had some years before subjected the colony to the thing, although they obscured it under another name. Lads from the Parkhurst Penitentiary were sent from England as early as in 1843. They were called Government juvenile immigrants. They had a guardian (J. D. Wittenoom) in the colony. Their sentences were for terms ranging downwards from five years. They were "indentured" to the settlers. An official report concerning one of them will sufficiently describe the system. He was "indentured" in February 1844. He "behaved very badly during the half-year (1848). In March Mr. Leake gave him up, and he was assigned to Mr. Lockyer, who kept him but a few days. He was then sent to his present employer. He has a dogged temper, and requires a tight hand over him."[1] Some behaved well. Thus under the euphonious name of Government juvenile immigrants did the colonists become acquainted with convicts, whose hateful mien was first endured, then pitied, then embraced. When the climax came, Earl Grey, the advocate of transportation, was the tempter. The boon rejected in 1845 was accepted in 1849, when the colonists thought their burdens had become intolerable.

A keen observer (Mr. Anthony Trollope) visited them in 1871. They had in the mean time received and had ceased to receive convicts. His verdict was that those who declared "that the colony could not have lived without the questionable boon"[2]

[1] Parliamentary Papers, vol. xlv. p. 99. 1850.

[2] 'Australia and New Zealand,' vol. ii. p. 94. By Anthony Trollope. London: 1873.

had reason on their side. A minority still clung to the idea that it might have lived without contamination from England. When Governor Fitzgerald described the colony in 1849 the die had been cast. At a public meeting presided over by the Sheriff the bitter potion had been craved for, and euphuistically the Governor trusted that "with regard" to the high rate "of wages" . . . "the expected supply of exiles will remedy the evil." Thus one obstacle to progress was in a manner overcome, but neither hopefully nor scientifically. Another obstacle inherent in the formation of the settlement was the absence of a class capable of cultivating the land profitably. Labouring men who reviled Wakefield as an enemy because he desired that they should begin to labour under conditions wholesome for themselves and their neighbours, were nevertheless conscious that something was wrong in Western Australia. Even sales at half-a-crown an acre by over-gorged landowners had not stimulated agriculture. Land-owners and residents, in a capital which was rather a village than a town, though they had grasped enormous tracts in defiance of Wakefield's postulate that a sufficient (and that a high) price should be paid for every acre, were equally convinced that something was rotten in their system.

The remedy devised is amongst the most singular of the developments of social order or disorder amongst English colonists, and deserves to be recorded in juxtaposition to the plan sagaciously adopted in South Australia. It has been seen that when Earl Grey asked Governor Fitzgerald to suggest regulations for applying the Act 9 and 10 Vict. cap. 104, to the colony, the Governor appointed a Committee, and the recommendations of the Committee were denounced at a public meeting in July 1849. The difference between the theorists is not so important as their agreement in recommending tillage leases. The Governor approved.

The public lands were divided into two classes, A and B. The former comprised lands within a short distance from any town site, from the sea-coast, or from the banks of certain portions of specified rivers or inlets. The Swan was dignified by being included,—"from Fremantle to Toodyay Town Site." Within the Class A, the public meeting, the Committee, and

the Governor concurred in recommending that tillage leases for eight years should be granted, at a rate not exceeding one shilling an acre, the lessee having a right of pre-emption. (There were unimportant variations with regard to the area to be leased.) The public meeting wished that pastoral leases might be issued for eight years within Class A. The Governor and the Committee limited them to one year. All recommended that in Class B (which included all land beyond the boundaries of Class A) pastoral leases for eight years should be granted. The Committee and the public meeting desired to give the pastoral lessee the option of purchase on the expiration of his lease for "fair value"—not less than the established minimum price. If the lessee should decline to buy, others might do so. If no part of a run should then be sold, the lessee was to be entitled to a renewal of lease.

The Governor drew up a code agreeing generally with that of the Committee. His alterations gave a right of renewal to a tillage-lessee at not more than 50 per cent. increase if no purchaser should appear, and to a pastoral lessee in Class B (under like conditions as to a purchaser) a preference for renewal at an increased rent of not more than 50 per cent. Earl Grey sanctioned the tillage leases, but said, "I have not been able to sanction the very low rent which it was proposed to reserve." By a stroke of his pen he changed the minimum rate from one shilling to two shillings, and wrote didactically to the baffled Governor. He sent an Order in Council fixing the amount, and framed in some respects so as to embody the Governor's general recommendations. He added coolly, "You will observe that a great deal is left to your discretion." It is almost needless to say that the absurd imposition of two shillings was eventually abandoned as untenable; but it could only be destroyed by Royal Order.

It required some hardihood to declare that a shilling an acre per year was a "very low rent" in a country where the fee simple had been sold for less than two shillings and sixpence an acre; but Earl Grey had been equal to the occasion. Though there was absolutely nothing in any other colony faintly allied to the Tillage Regulations of Western Australia, Earl Grey roundly asserted in his book (1853) that the rules in that colony

were "different in form but the same in principle" as in New South Wales.

The contrast between the earlier system of free grants and the later method adopted for colonizing in Western Australia is to be seen sharply defined in returns published in 1870. Under the head of 443 free grants "in right of location duties performed" were, omitting fractions, 1,200,000 acres. Under the head of purchased lands were 2800 grants, comprising 257,000 acres. More than ten millions of acres were held under pastoral licenses and leases. Under 795 tillage leases, 89,108 acres were held.

To the character and temperament of Sir Charles Fitz Roy the colonists were more indebted than was apparent at the time. Neither did they at first appreciate the worth of Mr. E. Deas Thomson, their Colonial Secretary. By mutual confidence and by loyalty to their Queen and country, the two men were fitted for their work. They not only did it well at the time, but in their manner of doing it they paved the way for the orderly working of the more ample representative institutions which were in a few years to be established. With Wentworth controlling the bulk of the elected members, storming against abuses, but ever professing to restrain himself within constitutional limits, and desiring to form not an anarchical burlesque of the House of Commons, but as close a copy of English institutions as circumstances permitted;—with Deas Thomson suave and astute, loyal to the Queen and to the Governor, and patriotic as a colonist;—with Sir Charles Fitz Roy ready to assume responsibility when necessary, but content to leave the man who bore the brunt of battle to conduct the campaign in his own manner so long as principles decided upon in the Executive Council were kept in view;—the public men of New South Wales were gradually inured to parliamentary methods, and taught to respect those who laboured in the parliamentary arena for the common good.

The new Governor arrived in H.M.S. 'Carysfort,' took the oaths of office on the 3rd August, 1846, and announced the re-appointment of the Executive Council by the Queen. The Commander of the Forces, the Bishop, the Colonial Secretary, and the Colonial Treasurer were the advisers of the Governor.

Courteous in manner he was cordially received, and it was understood that it was his intention to observe and judge for himself. He was not committed to any of the positions taken up by Gipps. But the times and arena were changed. In the early part of the reign of Gipps he had only a nominee Council. He was the last wielder of those powers of the Governor, which expired when a House partly representative was called together in 1843. Sir Charles Fitz Roy had suffered no diminution of his powers, and with prudent tact resolved to exercise those which were entrusted to him, as far as might be, in conformity with Parliamentary practice. To the able, self-possessed, and persuasive Deas Thomson he loyally committed himself; not abnegating his own functions or will, but, having once consulted and determined on a course to be pursued, never shrinking from the position advisedly taken up, and sustained by him who had to conduct the parliamentary campaign. He was soon relieved by the Colonial Office from the mesh in which former instructions had enwoven Gipps, and entered upon a comparatively halcyon period, for which some praise is due to himself. He summoned the Council on the 8th September, announced that he would only propose to them measures immediately necessary, invited their open and unreserved communication with him, and assured them of his sincere desire to co-operate with them in promoting the public welfare. An address couched in friendly terms replied to his speech. Wentworth never relaxed his hold of the position, however, and immediately gave notice of his Bill (repeated from the former session) to repeal all local legislation which assumed "to vest the appropriation of the ordinary revenue elsewhere than in the Legislative Council."

To provide against heedless collisions the Governor communicated to the Council the Royal Instructions as to the Royal assent to Bills. They differed from those formerly in existence, and he made them known, "in the hope that he might thereby facilitate their legislative business." Wentworth's Bill passed the Council, but the Governor withheld the Royal assent from it; reserving for Her Majesty's consideration another Bill (also renewed from the previous session by Wentworth) to render certain persons ineligible for election to the Council, and to make void the election of any member accepting an office of

profit from the Crown. In sending his estimates to the Council the Governor inserted in them the item of the Border and Native Police, omitted by Gipps in consequence of the expiry of the Act creating that body. After the exhaustion of the unexpended balance of assessment in hand, Fitz Roy said that the maintenance of the Border Police, whether from the ordinary revenue or otherwise, would require serious attention. The financial message was throughout framed in a conciliatory manner.

On the 7th October, Wentworth held out an olive-branch on the subject of the schedules. Gipps had represented the Council as claiming a right to interfere with office-holders, "without reference to promises given, or expectations held out by the Imperial or local Government," and, in aid of his statement, had quoted the words used by the Council. Lord Stanley's despatch could have smoothed no difficulty while Gipps confronted the Council. The Governor sent down his estimates, and Wentworth, after due notice, carried an address which declared that—

"perceiving that your Excellency has placed on the estimates several departments for which provision is made by Schedule A . . . we desire most respectfully to intimate to your Excellency that being thus called on to vote a supplement to the services in the said schedule enumerated, we claim the right, as heretofore, to fix the amount to be appropriated to every detail of such services, except such as are specifically provided for in such schedule. At the same time we respectfully beg to assure your Excellency, that we have no intention, in asserting this right, to propose alterations in any of the salaries in the said Schedule, to which the faith of Her Majesty's Government has already been pledged."

Such an address would perhaps have satisfied Gipps, but not to him could it be sent. Wentworth averred that the change in the Government had been one not of men but of measures. For the first time the Council had been met with the cordiality which ought to exist between the executive and the legislative. He was willing to refrain from interfering with salaries which, right or wrong, had been promised. Cowper supported the address. Deas Thomson did the same, and believed it would be received in perfect sincerity. Windeyer thought it a proper mark "of confidence and gratitude."

Fitz Roy, not to be outdone in courtesy, "in compliance with

the address, and placing implicit confidence in the assurance that the Council had no intention to propose alterations" in salaries "to which the faith of Her Majesty's Government has already been pledged," submitted for consideration of the Council an estimate of the expenses of the establishment for the administration of justice "now defrayed under the aforesaid schedule." To the unthinking the quarrel may appear unaccountable which could be so easily appeased. The wiser will reflect that when from such causes kingdoms may be rent and colonies scattered, it behoves men in power to walk warily and give no occasion to malice. There will always be Lowes and Langs to promote public bitterness to serve special ends.

On the subject of quit-rents, a sore one for many, Sir Charles Fitz Roy promulgated in October 1846 an order allowing any debtors to commute them on favourable terms, and freeing from rent all lands on which twenty years' payments had been made. Over-payments were to be re-funded. Cowper introduced a Bill to appoint Mr. Scott the colonial agent, but he did not incorporate in it the conditions suggested by Lord Stanley, as to the cessation of the labours of the Corresponding Committee during vacations. The House declined to insert them, Mr. Lowe objecting to any compliance with Lord Stanley, and the Bill was reserved for Her Majesty's consideration. In 1849 the appointment was renewed with more circumspection. The Committee were precluded from giving instructions except during a session, and every such Committee was to be appointed in conformity with standing orders approved by the Governor.

An ominous question reared its head in October. A despatch from the new Secretary of State, Mr. Gladstone, suggested the revival of transportation to New South Wales. The exclusion of New South Wales from transportation sentences was "commonly reported to rest upon nothing else than a promise from Her Majesty's Government made in or about the year 1839, that transportation to New South Wales should cease." He would not dispute this view, believing "that the practical mischief of exciting jealousies by controverting it, would be greater than any that can arise from acquiescence in the assumption of its correctness."

Such a transcendental mode of dealing with a well-known

fact was not calculated to allay distrust in the new proposals. The Government would not resume transportation without "general approval of the colony, or of the portion of it to be affected by the alteration," but they doubted whether it was to be desired that "the absolute exclusion of convicts from New South Wales should continue." The re-introduction of prisoners, few in proportion to the population, and under the auspices of an improved system, would not be regarded with the jealousy and alarm with which the old scheme had been viewed. He trusted "that this frank avowal" would smooth the way for considering his suggestions. It would be acceptable to Her Majesty's Government if the Legislative Council "should show a disposition to concur in the opinion that a modified and carefully-regulated introduction of convict labourers into New South Wales, or into some part of it, may under the present circumstances be advisable." He found from a despatch of Gipps, that in Port Phillip the scarcity of labour had led to the introduction of "prisoners, passing through the later stages of their term, from Van Diemen's Land." Other arguments were adduced. The Government disclaimed any desire to act in a manner distasteful to the colonists, and though the despatch was marked confidential, Fitz Roy might use his own discretion in making it public.

Wentworth on the 13th October obtained a Select Committee to report upon the despatch. Deas Thomson, Windeyer, Lowe, Bland, and five others were on the Committee, which immediately commenced its labours. It was resolved that it was not necessary to take evidence on the general question, with which the members were sufficiently acquainted; but they took evidence as to some facts. They found that upwards of 1800 emancipated prisoners had been imported by employers into Port Phillip, or had immigrated thither, in two years, and that arrangements had been made to augment the number. Employers of labour in the Sydney district had resorted to the same source to supply their needs. The Committee found that Mr. Gladstone was not the first to suggest the revival of direct transportation to the mainland of Australia.

In 1844, Lord Stanley had suggested a conference between the Governors of New South Wales and Van Diemen's Land

and the Superintendent of Port Phillip, "to confer and, provisionally at least, to decide upon the best mode to be taken to provide for the reception and employment of exiles from this country." The finding of receptacles for convicts and exiles within the Australian colonies was, he said, "so momentous an object of national policy that we can acknowledge no conflicting motive as of sufficient importance to supersede it."[1] In 1844 Mr. J. S. Hampton, Surgeon Superintendent, sailed in the 'Sir George Seymour' with 345 convicts, to Hobart Town. They were called "exiles," and they signed a paper expressing their "deep sensations of gratitude" to Hampton for his "almost paternal care." In 1845 Lord Stanley announced that "the Queen will in exercise of the powers vested in Her Majesty by the statutes 5 and 6 Vict. cap. 36, § 22, and cap. 76, § 51, establish a new colony to be called North Australia, of which the southern boundary will be the 26th degree of south latitude." Such a settlement, he said, had been recommended by Sir Richard Bourke and approved by Lord John Russell, and was also recommended by Dr. Lang when examined as a witness before a Committee of the House of Commons in 1837. But Sir Eardley Wilmot had in the same year (1845) transmitted a serious petition from a large number of free colonists of Van Diemen's Land, praying for relief from the system under which that colony groaned as the receptacle of all criminals exported to the southern hemisphere. In less than four years, ending in October 1844, more than 16,000 had been landed there. They besought that this rate of introduction might be stayed at once, and that arrangements might be made for the gradual and total abolition of transportation to the island. The reception of exiles at Port Phillip could hardly alleviate the evils complained of, for the exiles were supposed to be less abandoned to crime than those poured into Van Diemen's Land, and the absorption of the worst class in Van Diemen's Land would be unimpeded. On 19th March, 1845, the 'Sir George Seymour' arrived at Geelong with 174 exiles; and, within ten days, 165 of them had been hired at wages varying from £18 to £20 a year with board and lodgings.[2]

[1] Lord Stanley to Sir E. Wilmot, 27th July, 1844. Parliamentary Papers, vol. xxix. House of Commons. 1846.

[2] The cost of landing, housing, feeding, supervising, and advertising in

Both Gipps and Mr. Latrobe wisely and earnestly represented the urgent need for female immigration in Port Phillip. Another important point was animadverted upon by Sir George Gipps, and it was to become in after years the ground of serious opposition in the Colonial Legislature of Port Phillip when it became the colony of Victoria. Gipps informed Mr. Latrobe that the introduction of pass-holders from Van Diemen's Land was "absolutely illegal," and that they would be liable to the punishment of persons "returning from transportation before the expiration of their sentences," and he warned Lord Stanley of the evils which might be brought upon New South Wales by the arrival of such pass-holders "under authority of pardons issued by the Governor of Van Diemen's Land available throughout the Australian colonies." Governor Grey at South Australia struck the same chord. Residents in that colony, and the Secretary to the South Australian Society in London, remonstrated against such an invasion of their privileges as a direct violation of the spirit of the Acts for the government of South Australia which forbade the introduction of convicts. Mr. Gladstone (May 1846) would not admit that a breach of obligation had been committed, but, "on general grounds," so far yielded to remonstrance, as to direct that the pardons should be so altered as to enable the holders to remove to any place except to the county or colony from which they had been transported. The notice complained of by Governor Grey had informed holders of conditional pardons in Van Diemen's Land, that the Governor there would issue pardons "extended to the limits of the Australian colonies and New Zealand." Mr. Gladstone by no means appeased public feeling by his concession. Strong feeling was excited throughout Australia by the evident intention of the Home Government to recur to the system of pouring its criminals into Australia. Laboured despatches on the advantages which would accrue from the new colony, North Australia, proved that the Colonial Office was bent upon restoring the state of affairs which had so recently been abolished. The loss of labour had appeared grievous, but the crisis was past, and after

Port Phillip was £34 16*s.* 3*d.* The sale of the blankets and bedding of the exiles realized, net, £55 1*s.* 6*d.* A profit of £20 5*s.* 3*d.* was therefore gravely exhibited in the commissariat accounts published in the colony.

surviving the throes of a new birth, the colonists were appalled at the prospect of again domiciling amongst them the accredited villains whom the populous United Kingdom was unable to bear. Norfolk Island had been transferred to Van Diemen's Land in 1844, in the vain hope that it might relieve the latter from incorrigible convicts. The crimes prevalent there were so revolting that the inhabitants of Van Diemen's Land, though inured to contact with vice, shrunk from any system which would enable expirees from Norfolk Island to mix with their population. Sir Eardley Wilmot proposed to shut up the doubly-convicted in Norfolk Island. Port Arthur in Tasman's Peninsula was to be another isolated receptacle for the vilest offenders arriving from England, and other convicts were to be distributed through the different agricultural districts, or to work on the roads in gangs. Reams of paper comprised the regulations with which Sir Eardley Wilmot and his advisers strove to carry out their unsavoury duties as gaolers. Against Sir George Gipps' remonstrance about pass-holders Sir E. Wilmot retorted that Van Diemen's Land was flooded with criminals from New South Wales, and received back only those who had undergone long probation. It would be hard if the island should "be the only place for the pardoned as well as the bond." Such was the state of the transportation question when Wentworth's Committee handled it in 1846. Sir John Jamieson as President, Wentworth as Vice-President, with Dr. Bland of the Patriotic Association, had in 1839 written a long despatch to C. Buller, M.P. urging the continuance of transportation, to which Mr. Buller was opposed. They wished it to be coupled with extensive immigration, and with assignment of convicts to private employers. They had sent a numerously-signed petition supporting their views. They had failed then, but it seemed that they might now succeed. Mr. Gladstone in 1846 invited "the members of the Legislative Council" to acquiesce in his baneful proposal. On that hint the Committee most unwisely and hastily acted. They sought to protect their position, by saying that the despatch intimated that the aversion of one part of Australia would not be allowed to bar the pouring of convicts into any other part.

"If it were placed at the option of the colonists whether they would at once and for ever free themselves and their posterity from the

further taint of the convict system, doubtless a large majority, especially of the operative classes, would give the proposal for renewed transportation an unhesitating veto. Nor do your Committee feel by any means certain that the decision of the majority of the upper and middle classes of society would not also be in accordance with the report of the General Grievance Committee of 1844, that the moral and social influences of the convict system—the contamination and vice which are inseparable from it—are evils for which no mere pecuniary benefits could serve as a counterpoise."

Seeing, however, that it was "no longer an open question," that they were threatened with the outpourings of the probation system in Van Diemen's Land, with expirees, and exiles, and with numerous other evils, they had been driven to the conclusion that a "modified and carefully-regulated introduction of convict labourers into New South Wales, or into some part of it, may under the present circumstances be advisable," but only on the express understanding that no "conceivable modification" of the probation system of gangs, in operation in Norfolk Island and Van Diemen's Land, pregnant with horrors of the cities of the plain, should be introduced in New South Wales. Assignment only could render transportation endurable. Withal there must be imported an equal number of females, the balance if needed being made up of female immigrants. Simultaneously also there must be an equal number of free immigrants, in equal proportion as to sexes. Five thousand male convicts were to be received. Convict establishments at Norfolk Island, Cockatoo Island (Biloela, in Port Jackson), ironed or road gangs of criminals under colonial sentence were to be "maintained as heretofore at the cost of the British Treasury." Two-thirds of the expense of police, gaols, and criminal administration of justice, were to be borne by the Home Government, but on the relinquishment of the land fund, and of all other revenues or droits of the Crown to the Governor and Legislative Council, the whole of this branch of expenditure was to be assumed by the colony with a view to aid the British Government in defraying the free immigration stipulated for. Regulations for the government of the convicts, saving the royal prerogative of mercy, were to be made by the Governor and Legislative Council. The report of the Committee was elaborate, and was brought up on

the 31st October. Before that day petitions against the revival of transportation had been presented by Mr. Cowper and others, and Cowper had moved for a call of the House to consider the report when brought up. Wentworth supported the motion, which was lost. The report was not considered, the Council being prorogued on the day on which it was brought up.

Wentworth might have spared his labours. They could only serve his adversaries, and injure himself. His demands for Imperial expenditure could not be granted, and the plea, that his plan was proposed only because the evils of transportation were sure to fall on the community under any circumstances, was one which the community rejected. Before the Committee made its report a large and enthusiastic meeting had been held in Sydney to denounce any return to transportation in any shape. Aware of his opportunity, the wily Charles Cowper had thrown himself upon the wave of the popular tide, had presided at the meeting, and was entrusted with the presentation of a petition.

The prorogation cut the matter short for a time; but the issue was not doubtful. The leading journal, the 'Sydney Morning Herald,' adopted the prevailing opinions with vigour. The 'Atlas' vainly plied its task of opposing them. Mr. Lowe had been on the Select Committee, and the 'Atlas' represented his presumed opinions. By refusing to print the various petitions presented by Cowper, the Council stimulated agitation out of doors. Meetings of similar character were held at Port Phillip, and at various places in the interior. Confidence in success of the Opposition was increased by tidings that Mr. Gladstone had left the Colonial Office when Peel was driven from power by the conspiracy of Lord George Bentinck and others with Lord John Russell to oppose a Bill for the protection of life in Ireland. By the grace of Lord George his political antagonists stepped into the enjoyment of an era of prosperity prepared by Peel. Earl Grey took charge of the Colonial Office. His opinions on the transportation question were unknown, but his supposed addiction to the Wakefield land theory was disliked.[1] The transportation

[1] In his 'History of Lord John Russell's Administration (1853), Earl Grey said that the discontinuance of transportation to New South Wales "always appeared to him an error, and that the whole territory of New South Wales should not have been closed against the reception of convicts," &c. &c.

report was virtually dead long before Cowper in the following session formally destroyed it by carrying in the Council a resolution—

"That this Council disapproves of the principles avowed and recommendations contained in the report of the Select Committee . . . respecting the removal of transportation to this colony; and desires to record the expression of its opinion that a return to the system of transportation and assignment would be opposed to the wishes of this community, and would also be most injurious to the moral, social, and political advancement of the colony."

Cowper's opponents vainly endeavoured to shake his position by proving that he himself had joined in importing expirees from Van Diemen's Land to labour on his own property. Even when Cowper sneered at others for doing what he had done, and his double-dealing was exposed, and he was called to account, no change was brought about. When a populace puts a man forward to do its work, it is utterly careless whether he is consistent with himself in doing it. Mr. Lowe, who had joined in the report, abstained from voting when it was condemned. The surly Wentworth voted in the minority. Neither the *vultus tyranni* nor the *civium ardor prava jubentium* had terrors for him. Only seven supported the report. It is merely necessary to deal here with the subject as it affected the Legislative Council. The final doom of transportation was of a later date, and must be told separately.

The question of immigration was taken up by Cowper in 1847, as soon as the transportation report was rejected. Petitions to the Queen, and to both Houses of Parliament, averred that twenty thousand persons were needed within twelve months, and urged that a loan of £1,000,000 sterling should be raised on the territorial revenue of the colony to furnish immediate funds. Colonists in their sore need were importing Polynesians, and Coolie labour from India,—a procedure which excited in the Council regret and alarm.

Fitz Roy was thanked for recommending the introduction of five thousand statute adults at the commencement of 1847, and he promised to support the spirit of the address to the Queen, which he was about to forward. He avoided collisions with the

Council, but was not spared by the 'Atlas' newspaper, which criticised offensively the manner in which he exercised hospitality. Dr. Lang afterwards devoted many newspaper articles, and some pages in his books, to violent assaults on the Governor's private character; but the public scarcely sympathized with him, for to outward appearance Fitz Roy was courteous and attentive to his duties, and there was a reluctance to enter on examination of that private life in which many who attack others are peccable themselves. The advantage of his loyal co-operation with Deas Thomson was shown in all debates in the Council.

Mr. Lowe repeated and carried by two votes his motion, requesting that money might be devoted to schools founded on the principles of Lord Stanley's national system in Ireland. The Governor replied (October 1846) that even if the financial arrangements would admit of the grant he would wish sufficient time to ascertain whether a measure of such vital importance was applicable to the circumstances of the population, and Lowe read in this reply the mind of the Bishop on whose head he was at the time hurling philippics in the 'Atlas' newspaper.

It is significant of the expansive power of a young community, that a Select Committee was appointed in 1846 to report upon steam communication with England, and strongly recommended the adoption of the route by Torres Strait and the Red Sea. Railways also were proposed for the interior, and surveys were undertaken. It is noteworthy also, that owing to the thorough dependence of the colonists in past days on the Executive Government, municipal institutions had been unable to take root amongst them. Not only did the District Councils fall almost still-born, languishing utterly for the most part, and barely sustaining life in one or two localities, but the citizens of Sydney presented an elaborate petition setting forth that their revenues were inadequate, and ought to be supplemented by wharfage rates, tolls, and license fees from auctioneers, publicans, hawkers, and others. They prayed that their Act of Incorporation might be repealed, or its provisions modified by increasing the city revenues.

The labours of Mr. Scott, the Parliamentary Agent in England, were principally devoted to emigration, reducing the upset price of land, and steam communication. On all these subjects he

had repeated interviews with Ministers. On the land question he wrote that the Russell Ministry awaited the return of Sir George Gipps to England, a determination which aroused jealousy in the minds of the majority in the Legislative Council. On the 25th September, 1846, Mr. Lowe carried resolutions declaring that the raising of the minimum price of land to £1 an acre, had rendered waste land unsaleable, and that while such a price was maintained, the squatting question could not be satisfactorily settled, and therefore it ought to be reduced. Eloquently he spoke in favour of sale. His antagonists could not but admire. The effect of his speech was somewhat marred, however, by Mr. Robinson, a Port Phillip member, who gravely read a thesis, entitled, "Rent better than sale," in which, in 1844, Lowe had in his most incisive style argued that leasing the Crown lands was infinitely better than selling them. Mr. Lowe was beginning to turn from his late colleagues in the Pastoral Association, and rest his hopes on other supporters.

The status of the legal profession was much discussed in 1846. One of the Port Phillip members, a solicitor, introduced a Bill "to abolish the division of the profession of the law in New South Wales." It will be remembered that the profession, originally amalgamated, had been divided by a rule of Court, in the time of Chief Justice Sir Francis Forbes, and Judges Dowling and Burton, the latter of whom had, in 1834, by force of character, given vitality to the rule which his colleagues had devised before his arrival.

Wentworth, Windeyer, and Darvall opposed the Bill, and Lowe warmly supported it. Failing to throw it out by the previous question, Wentworth succeeded in referring it to a Select Committee, on which he did not place Mr. Brewster, the author of the Bill, though he included Lowe. The Committee reported some valuable evidence, and expressed a hope that a fresh Committee might be appointed in the ensuing session. It was accordingly re-appointed in 1847. It found that the Chief Justice, Sir Alfred Stephen, and the resident Judge at Port Phillip, were averse to the amalgamation. After weighing the evidence on both sides, the Committee reported, in the nervous language of Wentworth, that the proposed change would be unwise, that it would remove the legal responsibility

for negligence or ignorance attaching to attorneys, would remove the check afforded by the Bar against speculative actions, would tend to decrease generally the skill, efficiency, and character of the professors of the law, and consequently, by degrading the Bench, impair the administration of justice. One grievance which might have led some persons to favour the innovation was, that practically the Bar had a close monopoly of advocacy. No man could be called to the Bar in the colony, though attorneys might be enrolled. It was in the hands of the few who arrived from the United Kingdom.

The report recommended that the youth of the colony should be afforded opportunities of admission to the Bar without being compelled to study abroad. Among general recommendations was one, "to thoroughly cleanse out that Augean sty, the Court of Equity; and instead of the prolix, dilatory, and expensive system which prevails there at present, to introduce a concise, simple, and expeditious mode of proceeding suited to the wants and means of the community at large." The proposal to admit candidates after examination to the Bar was adopted soon afterwards, and a career was opened for the native youth which had been so long denied. (In 1849 Wentworth was seriously to address himself to the task of founding a University, by whose means a career might be opened for all the talents of his countrymen.)

Mr. Lowe availed himself of a controversy affecting the position of an officiating deacon in the Church of England, and introduced a Bill to give clergymen of the Church of England a freehold in their benefices. Petitions from clergymen against the Bill were presented to the Council, but to thwart the Bishop was too cherished an object for Mr. Lowe to abandon. On the motion of Mr. Cowper, when the second reading of the Bill was on the Order paper, the Bishop was admitted to be heard at the bar of the House against the Bill. The scene was striking. The old man, eloquent, looked upon as the prime supporter of Gipps in his deadly struggles on the land question, appeared in the public hall of the Legislature controlled by his own and Gipps' opponents. Whatever their feelings, the members behaved with the decorum of the most solemn Roman senate. Throughout his address, of which Mr. Lowe admitted the

eloquence, the Bishop was heard with a respectful attention, proving that while recognizing his dignity they knew their own. His arguments, interesting specially the church over which he presided, need not be repeated here. They are recorded in the journals of the day.[1] They effected their purpose, and though Lowe moved the second reading of his Bill, an intimation that Windeyer would move the previous question unless the Bill were withdrawn, compelled him in deference to the feeling of the House to accept the hint.

On the 31st October, 1846, Fitz Roy dismissed the Council to their homes with thanks for their liberality; and the year which had opened so gloomily under Gipps, closed with amicable relations between the Executive and the Legislative Council.

Of the proposed colony of North Australia the fate may be told in few words. Colonel Barney, an engineer officer, was appointed Superintendent, and sailed to Port Curtis in 1847. He had neither the energy of Phillip nor his freedom from control; and the settlement was abandoned while in process of formation. It is worthy of remark that while the press was rife with sarcastic comments upon the inanition of the new settlement, not even the opponents of transportation viewed it with any misgiving lest by its success it should further complicate the convict question. Lord Grey expressed his regret at the heavy expenditure incurred in the experiment, and Sir Charles Fitz Roy excused it by urging that immediate steps in forming the settlement were enforced upon him before he left England.

Colonel Barney failed in finding good fresh water at Port Curtis, but he attributed its lack to a season of drought. He sailed to Wide Bay, and still was in want of water. By strange mismanagement he expended his fuel, and could not replenish his stores. His failures, and the fact that on the 15th April, 1847, he had not even fixed upon a site for the settlement, were of little moment, however, for on that day he received instructions to return to Sydney, a despatch from Lord Grey (15th November, 1846) having directed Fitz Roy to break up the establishment of "the colony of North Australia." Fitz Roy, in reporting his compliance, represented that it would be wise to bring the

[1] 'Sydney Morning Herald,' 23rd September, 1846. That journal sided with the Bishop, while the 'Atlas' belauded Lowe.

vicinity of Port Curtis within the settled districts of New South Wales. Flocks were being already driven far to the northward of the 26th degree of south latitude, and he desired to prevent the occupation of the country by "private enterprise in opposition to the rights of the Government."

It was not, however, until 11th May, 1853,[1] that the Governor was able to despatch a party to conduct preliminary surveys, "and to lay out the important town of Gladstone" at Port Curtis. In 1854 eight counties were provisionally proclaimed. Three of them were placed in the settled districts, and five in the intermediate. Captain Maurice C. O'Connell (son of the officer who married Governor Bligh's daughter, after Macquarie assumed the government in 1810) was Crown Commissioner of the pastoral district of Port Curtis and Government Resident at Gladstone. Squatters were widely spread throughout the interior on the watersheds of the Burnett and Dawson rivers, and town and suburban allotments at Gladstone were sold in Sydney early in 1854; no one foreseeing that the exigencies or convenience of the settlers would, in a few years, create a new town, Rockhampton, on the Fitz Roy river, which would overshadow the importance of Gladstone.

The operation in New South Wales of the waste lands occupation system, sanctioned by Earl Grey in 1847, spread over so many years that special consideration may be devoted to it. It may be well to glance at the state of public feeling prevailing in Sydney at the elections in 1848 after the first Parliament expired. A speech of Wentworth's will be its best interpreter. He, the man dreaded as a disturber when, as tribune of the unrepresented populace, he thundered against the tyranny which barred his countrymen from the ancient rights of Englishmen—trial by jury, freedom of the press, and taxation by representation—lost proportionately the popularity which follows him who, aiming not at the public good, but at his own aggrandisement, fawns upon a crowd and promises to do whatever that crowd may crave. His surly adherence to the recommendation of the transportation committee in 1847 had offended those who saw in forced labour an interference with

[1] Parliamentary Papers, vol. xliv. 1854. Despatch. Mr. Gladstone was then Chancellor of the Exchequer.

their wages. The union of all classes against Sir George Gipps' arbitrary Squatting Regulations of 1844 had crumbled away. The bending Cowper and the versatile Lowe had thrown themselves into the opposition to that transportation report for which with Wentworth the latter had been responsible. Lowe, after conspiring with the squatters against his patron Gipps, had turned upon his new friends, and when Wentworth asked the suffrages of his Sydney constituents in 1848, Lowe stood against him and against Dr. Bland. Mr. Lamb, a merchant, was a fourth candidate, and three only were to be elected. A few extracts from Wentworth's speech at the hustings will sufficiently explain the influences brought against him, and the angry scorn with which he met them.

"My advanced age, my diminished strength, the embarrassed state of every interest in the colony, all point to a private life as the most desirable for me to choose. But a large and influential body of my fellow-citizens have again demanded my services, nor can I, after having devoted the whole of my past life to the service of my country, quit that service when times so critical and foreboding call me to her aid. . . The 'No Coolie' cry is in the mouth of the creatures and instruments of my real opponents, who are ashamed to breathe it themselves. But the cowardly, the treacherous manœuvre is too transparent. . . . Placed in a position without any power to prevent the constant introduction of criminals, I thought, and the (Transportation) Committee thought with me, that, as we were compelled to submit to the evil, it would be better that that evil should be modified . . by the condition that one-half of the police expenditure should be defrayed out of the Imperial Treasury, and by the further condition that for every convict sent out three free emigrants should be sent out at the expense of the British Government. . . If convicts come indirectly from the neighbouring colonies they will be an unmitigated evil, over which we could have no control or supervision. . . Even my honourable friend, Mr. Charles Cowper, the champion of the anti-transportation movement, silently acquiesced in the proposition to introduce exiles. Why, then, I ask, do you raise your voices against me only? Why am I to be singled out for obloquy for doing that which all beside have done? Why do you not clamour down others with this charge? Why do not you, who are most bitter against me, affix it on your idol, Mr. Robert Lowe, who was as deeply implicated in the Transportation Report as I was? . . But this course would be

inconsistent with the persevering injustice of my opponents. All, all the blame in the matter is to be visited on me as if I were the beginning and the end of all legislation upon it. I will not say I despise the clamour which has been raised against me, for I respect the right of the people to express their opinions on every subject; but I will say I despise the equity—the spirit of that people who can heap this clamour on my naked head alone."

After the cheers, which for a time interrupted him, he said:

"I contend that this clamour is not only unjust towards me in particular, but that it is utterly unreasonable in itself. I contend that the tenor of the Transportation Report was against the resumption of transportation, provided it could be discontinued altogether. . . It has been said that I have misrepresented and slandered the Irish. It is true that in a certain debate in the Council I did denounce the Irish murderers—those branded ruffians who, in some of her counties, were polluting her soil and blasting her fame with the blood of innocent and unresisting victims. In the full abhorrence and detestation of my heart I denounce these men, not only as the destroyers of human life, but as the assassins of Ireland's good name. Some of the best blood in my veins is Irish, and who will venture to tell me that I am bold enough or base enough to calumniate the land of my father?"

He had been charged with opposing a reduction to a £5 franchise, which in 1839 he had advocated in the Australian Patriotic Association.

"I will descend to no deceit with you on this subject, and though at the date of that report I was favourable to a very low franchise I could not now conscientiously support its reduction. (Disapprobation.) I know these sentiments are not popular, but on this subject at least I will speak the whole honest truth, for I will not have it said when I have taken my seat that you returned me under false colours. With a changing, migratory population like ours—with people frequently residing but a short time in one place, I must look upon the £20 franchise as low enough. But I would reduce the freehold franchise to £10, and extend the franchise to £20 leaseholders all over the country. From the remarks that have fallen from you this day it is easy for me to infer that the squatters are no favourites among you. I am a squatter, and I tell you that your prejudices against the squatters arise from your ignorance of your own interests. Whatever may be your present opinion of fixity of tenure (under Earl Grey's Orders in Council of 1847)—however you may cavil at the right of pre-emption

(*ib.*) . . if I am the fortunate possessor of these things it is *you* I have to thank for them, and to none do I owe more gratitude in this respect than to your especial favourite, Mr. Robert Lowe. There is no person whose speeches, whose writings, whose reports have had one-half so much weight with the Home Government in the concessions it has made to the squatters as Mr. Robert Lowe. It was *his* talents and *your* petitions that gained us these things. (No, no.) You may say 'No, no,' but I ask if it was not you who signed the petition of 1844 agreed to at the meeting at the Royal Hotel? Did not that petition pray for twenty-one years' leases for the squatters, and are you discontented now because the Government proposes to give fourteen? It is not my act. Your own idol, Mr. Lowe, took a much more active part in it than I did, and yet you blame me alone."

(The freehold was not in danger.)

"I unhesitatingly assert that no one has more earnestly sought to uphold the peoples' right of freehold in the soil than I have. If I saw that freehold endangered no one would stand forward more heartily than I, to defend and preserve it. The soil of the country is the patrimony of unborn generations; and think of me as you may, or as you will, I am not the man to cheat our children or our children's children out of their inheritance. Some have imputed to me, in this and other subjects, base and sordid motives. They have told you that I have been actuated by self-interest alone. I deny the charge. I repel it—I scorn it. . . . My friend, Mr. Lamb, has thought fit to say that I have outlived my constituency;—that my opinions and principles are not now the opinions and principles of this constituency. I will not seek to retort on Mr. Lamb, as I have ever believed it to be the etiquette of English elections for candidates to canvass on their own worthiness rather than on the demerits of their rivals. I will, therefore, say nothing of Mr. Lamb further than this: that if after weighing his qualifications, and looking into *his* opinions and principles, you think him a better man to represent you than myself, if from his first career he has better deserved your confidence and support, it is your duty to elect him. But I do not think it will be consistent with my duty to show the same forbearance towards my other opponent, Mr. Robert Lowe. Mr. Lowe has said not only that I am not worthy to represent the constituency of Sydney, but that I am unworthy to represent any constituency at all. I think that he might, in this sweeping denunciation of myself, at least have excepted that constituency which he has just deserted. He might have admitted that I was fit to represent a squatting constituency. But I would ask (and the enigma would

not be of easy solution), for what constituency was the learned gentleman himself fit? Judge you from his past political life—and expound the riddle if you can. He made his *début* in political life in this colony, as a nominee of the Crown, and was appointed by Sir George Gipps, and until after he had personally quarrelled with the late Governor, he uniformly supported the measures of his constituent. A few short months elapsed, and he deserted that constituent, but clung to his appointment till driven from it by the taunts of Mr. Roger Therry, who compared him in the Council to the adder which stung to death the benefactor who had warmed it to life and strength in his bosom.

"Driven from this appointment, Mr. Lowe sought refuge amongst the squatters of the counties of St. Vincent and Auckland, and was returned by them as their representative on the strength of his professions—to support the squatting interests. A little time, and alas!—his opinions on the squatting question suffered change. I will not here say that the change in those opinions was not *bonâ fide;* but this I will say,—however strong the convictions that led to that change; however well founded they might be; however just the principles he was induced to adopt, it was the duty of Mr. Lowe to return to the community of squatters who had elected him, and telling them that he was no longer able conscientiously to support their interests, to have tendered his resignation of his seat. This is the course every high-minded, honourable man would have taken. But not so with Mr. Robert Lowe—he forsook the principles which returned him, but by retaining his seat choused the constituency of Auckland and St. Vincent out of their right of representation. What claim has a man like this to your confidence; a man who has betrayed every constituency which has yet trusted him? I remember too that I once had the misfortune to be the subject of his eulogy. Only two years ago this man heaped praises upon me;—designated me, in his eloquent and insidious flattery, 'the great son of the soil.'

"Now, however, this parasite of the moment tells you that I am not worthy to represent any constituency of this colony. This is the consistency of the eloquent Mr. Lowe! But it surprised me not—it will not long surprise any one. Long ago I felt the deep conviction that, having had to bear his praises, I must soon be doomed to bear his bitterest and most envenomed censure. The principle of the man's life is change, and I could not expect him to be constant to me alone. But I did not expect that an old comrade—one who had fought side by side with me the battle of the country, against tyranny and oppression, would have made a treacherous *détour* to stab me in the back. I

could not have expected that this detraction, this misrepresentation, this calumny, even though issuing from the lips of Robert Lowe, should have been uttered in my absence. But this is the honour,—this is the principle,—this is the generosity of my present opponent.

"I will not detain you much longer. When five-and-twenty years ago I devoted myself to public life I knew full well the vicissitudes of public opinion to which it was exposed, and I was prepared to encounter them. I knew the proverbial inconstancy of the popular gale;—that the breeze which filled my flowing sheet to-day, might become a head wind to-morrow. I had learned from the unerring history of the past, that whilst the misdeeds of public men are graven on brass, the records of their virtues and services are traced on sand. I had been instructed by the same stern teacher that the lauded patriot of to-day—the benefactor of his country and his kind—might be the despised exile of to-morrow. I foresaw too that in a shifting population like this, where circumstances and interests were in a state of rapid transition, I should be particularly obnoxious to events of this description. But with all this knowledge of the fate to which public men are so often subjected, I now fearlessly submit myself a second time to the ordeal of your opinion. From that tribunal I know there is no appeal; but I am content to rely on the merits of my public life. If you consider that life has been devoted to your service, if you consider my labours have not been unfruitful of good, to this our native and adopted country, you will not on this occasion leave me in the lurch. (Cheers, and cries of No, No.) But whatever your verdict may be with regard to myself, if it be the last public service I am to render you, I charge you never to forget your tried, devoted, indefatigable friend, William Bland. No man has ever served a country in a purer spirit of patriotism, no man ever more deeply deserved the gratitude of a generous people, than he has. You may cause it to be written on the tombs of my friend and myself—*Here lie the rejected of Sydney.* But I will venture to prophesy that in juxtaposition with these words posterity will add—*Who gave to those who deserted them the liberty of the Press, Trial by Jury, and the constitutional right of electing their own representatives.* (Tremendous cheers.) You may put it out of my power to serve you again—you *cannot* erase from memory the services of the past. I can truly say the love of my country has been the master-passion of my life. No man's heart has ever beat with a more ardent love of his country than mine, and it is on my native soil that I here stand. From boyhood up to manhood I have watched over its infant growth as a mother over her cradled child. Its welfare through life has been

the object of my devoted love and affection, and now, when my days are in the autumn of their cycle, that welfare is the object of my highest hopes and most hallowed aspirations. I thank you for your patient hearing, and will only add the repetition of my charge—deal with me as you think fit, but respect my friend."

They who make ephemeral sayings which they take for proverbs are accustomed to declare that no speech ever turned a vote. Wentworth's speech turned many. Men who had been carried away, if not convinced, by the eloquence of Lowe or the secret contrivances of electioneering agents, when they saw the men stand together on the hustings, knew which was sterling and which was counterfeit. One by adroit rhetoric might seem to be in earnest, but all knew that with Wentworth there was no seeming, and that he was at heart what he declared himself.

The history of the time could hardly be understood without a close examination of the election for Sydney in 1848, and it is well that Australians should know the nature of the man who filled so large a space in public estimation, and something also of the quality of that oratory which wielded the rising democracy of the South. For a democracy it was to be, more by the acts of the English Government than of Wentworth, and by a singular fatality he it was who made the only serious effort to transplant to Australia the institutions which would have given her a heritage in the ancient institutions of the mother country. Wentworth was at the head of the poll. But his gallantry could not save Bland from defeat. Lowe[1] and Lamb were elected, and Bland was rejected by more than eighty votes. Mr. Henry Parkes was an active supporter of Lowe, and was supposed to have influenced many who cared little for loyalty.

Looking forward to the future of his fickle country, Wentworth strove to store the minds of posterity with some knowledge of the faults and consequent misfortunes of bygone times, and we soon find him moulding the type of a University. In 1849 he obtained a committee to report upon the best means of doing so.

[1] Mr. Lowe was greeted at the hustings with great applause. To Wentworth's allusion to Lowe's former eulogy he replied, that when he praised Wentworth he "thought of him only as a patriotic and gifted son of the soil, and in the simplicity and folly of his heart praised him as an example to the rising generation" ('Sydney Morning Herald' report).

Deas Thomson, Cowper, Lowe, the Speaker (Nicholson), Plunkett the Attorney-General, G. R. Nichols, (Australian born, and a clever attorney), and James Macarthur of Camden, acted with him. A Bill was prepared, and on the 4th of October, 1849, Wentworth carried the second reading of

"a measure to test the philanthropy and patriotism of this Council—a test by which we may safely abide. So long as this institution shall exist we shall not be forgotten. So long as it shall flourish our memory will not decay. Far more important will its effects be than aught we have yet done. We have passed laws; but these laws may be altered—may in the change of fleeting circumstances be swept away. But this measure, which is to enlighten the mind, to refine the understanding, to elevate the soul of our fellow-men—this, of all our Acts, contains the germs of immortality—this, I believe, will live—live to commemorate the Council who passed it. I believe that from the pregnant womb of this institution will arise a long line of illustrious names—of statesmen, of patriots, of philanthropists, of philosophers, of poets, of heroes, and of sages, who will shed a deathless halo not only on their country, but on that university we are now about to call into being."

Difficulties in constructing the Senate prevented the passing of the Bill in 1849, but in the session of 1850 they were overcome. The preamble of the Act declared it expedient for the better advancement of religion and morality, and the promotion of useful knowledge, to found a university.

About the same time the Government gave effect to the wishes which the Council had so often expressed on the subject of primary education. The national schools of Ireland founded under Lord (then Mr.) Stanley had been proposed for imitation by Sir Richard Bourke in 1836, and Sir G. Gipps had, in 1839, regretted that it was not practicable to establish them. A Select Committee, of which Lowe was chairman, had in 1844 recommended the adoption of Lord Stanley's system, but Sir G. Gipps, while expressing his approval of its principles, declined to sanction an appropriation of money in furtherance of them. Under Sir Charles Fitz Roy, the Council retained its opinions, and money was voted. A Board of National Education was appointed in 1848. John Hubert Plunkett the Attorney-General was its chairman, Sir Charles Nicholson the Speaker,

and W. S. Macleay (a son of Alexander Macleay the first Speaker) were his colleagues.

A denominational school-board was also formed by the Government, to control the application of money devoted to denominational schools. In the matter of education the country was so resolved to be liberal, that it preferred to blunder by supporting two contradictory systems rather than withhold aid from either of them on principle. It need hardly be said that religious instruction was available for all children sent to the national schools. The State spent no money in imparting it, but placed no obstacles in the way of parents or guardians who desired to do so. A time was allotted for religious instruction. A conscience clause protected the system from abuse. Each school was open to children of all communions; no child could be compelled to receive, or be present at, any religious instruction to which the parent or guardian might object, and the time for religious instruction was fixed in such a manner that no child could "be excluded directly or indirectly from the other advantages" afforded by the school.

The Scripture lessons, approved by Whately and Dr. Murray, could be read in the ordinary school hours, but their use could be relegated to the time for religious instruction if parents or guardians of children should object to the use of the books in the hours allotted for secular or literary instruction. They who do not know the illogical fervour of partisans cannot but wonder at and deplore the fact that all friends of public education, and of religious teaching, did not hail the establishment of such a system as a welcome boon in a community of various denominations so widely scattered over an enormous territory, that it was impossible in rural districts to gather the elements of even a small school without admixture of different sects.

Keener observers will be less surprised, though perhaps indignant. The denominational schools had in the officiating minister an earnest friend, and in most cases he was antagonistic to the formation of a national school. Selfishness is a master passion, and the system which encouraged it had a completely organized machinery throughout the country. Each local congregation worked with and for its managing head at the metropolis. The national system had warm friends, but they were

without cohesion. The new board forwarded their rules to the courts of petty sessions sprinkled throughout the interior at rising townships and villages. The rules were exhibited, but were almost unnoticed. Only in one or two places, where an influential resident threw himself into the cause, was there any response to the invitation of the Government. It seemed likely that after long contention for the grant of money, it would lapse for want of claimants. The enemies of united education rejoiced. In 1849, the board appointed two agents; they were to act as inspectors also. To one[1] was assigned the district of Port Phillip. The early death of the other cast upon the Port Phillip agent the necessity of returning to Sydney, and establishing and inspecting schools throughout the colony from Moreton Bay to Portland Bay.

When explained at public meetings the system was heartily welcomed. Applications for aid in building poured in upon the board, and many zealous friends of united education fondly hoped that the day of divided communities and dissipated funds was over as regarded elementary schools supported, or in part supported, by the State. The enemies of united education began to tremble. Local contributions for buildings were freely given. One-third was required by the rules. School fees were gladly paid. How some in humble life showed "spirits finely touched to fine issues," one instance may suffice to tell. A poor washer-woman, whose husband was a sea-farer in the coasting trade, sent her eldest boy to a national school; he prospered there. There was a rule under which, if several children were sent from one family, the school fee for each underwent diminution. One morning the lad appeared with two younger children, carrying the full fee for each. The overpaid difference was returned to him with an explanation.

[1] The author. On referring to old papers I find a letter from Mr. James Macarthur of Camden Park, suggesting that I should apply for the appointment. I hope it is pardonable to transcribe a few of his kindly words. "It has occurred to me that such an appointment might not be unacceptable to yourself. Should this be so I do not know where the Board could meet with any one better qualified from general information, together with knowledge of the country districts and of the habits of the people, and above all from your having, as I believe, devoted much attention to the subject of systematic and national education."

On the following morning, the mother appeared with her children, and entreated that she might be allowed to pay the full fee for each. She was so grateful for what had been done for the son, that whether it were required or not, she could not be happy in her own mind unless allowed to pay for each child what she had paid for him. They who would enforce free education are perhaps ignorant of the nobility of mind which exists amongst the poor, and which free schools discourage by demoralizing parents relieved from their most solemn duty. Of the willingness of the people to adopt the national system, there could be no better proof than that at scores of meetings—held sometimes in Court-houses (for petty sessions) in rural districts, sometimes in hotels—on one occasion in an existing school-room which was afterwards transferred by its founders to the National Board—there was the same result. At Brisbane, on the occasion of the first circuit of the Supreme Court from Sydney in 1850, a large public meeting held in the Court-house was as ready to co-operate in establishing a school as the meetings held in rural districts proved themselves. The result was a rapid increase in the number of schools, national and denominational, the managers of the latter being spurred to activity by the success of the former.

The friends of religion and of education must sigh to think that if the leaders of the denominations had been wise in time, if they had heartily accepted the united schools which afforded ample facilities for separate religious instruction, the heart-burnings of years might have been prevented. The people were desirous to secure religious teaching for their children. The national system secured it for them, though it was not given at the cost of the State. The conditions precedent were readiness on the part of parents to ask for, and of the prominent guides of religious denominations to facilitate or even to sanction, the giving of religious instruction within the walls of the school. The published rules declared that "as the religious instruction of the children is under the control of the clergyman or lay person communicating it with the approbation of their parents, the Commissioners can give no liberty to any other visitor, whether clergyman or layman, to interfere at all upon the subject."

The instruction within the ordinary schools was deeply imbued

with religious sentiment, and conveyed much Bible History. Who must bear the blame of the comparative failure of a national experiment with which the mass of the people were ready to co-operate, and which succeeded, wherever proved, throughout the land, from Moreton Bay to Portland Bay? The accredited guides of the religious denominations were the culprits. They denounced in season, and out of season, any attempt to support schools except those under their sole and separate control. The numerical preponderance of the Church of England, and the influence of its able representative, Bishop Broughton, with whom few of its members would have desired to place themselves in antagonism, gave factitious prominence to his pronounced opposition, steady and consistent from the first proposition in 1836, to the practical experiments in 1849. Many of his clergy were as active as himself. The Roman Catholic body were in an anomalous condition. In Rome, the Pope would not allow a few Protestants to assemble for religious worship in a private house. No church could exist for Protestants within the walls. No religious teaching could be obtained except such as the successor of the infallible Alexander VI. might permit. If others should mete to Roman Catholics abroad the measure enforced by the Government of Rome, the conscience of every Roman Catholic parent in a Protestant State would be in daily torture.

But abroad the claws of the Vatican were withdrawn, and velvet paws stroked Protestant Governments to slumber until the hoped-for time might arrive when again Ridleys and Latimers might be martyred and a Luther be challenged for his life. In some countries it was enjoined upon the Romish priests not only to temporize with, but to grasp at, the schemes for general education which would have been put down with a high hand in Rome.

The Roman Catholic subjects of the Queen were as charitable and as willing as others to avail themselves of the united schools if not banned for doing so. All would have gone well if from the first the prominent members of the Churches of England and of Rome would have allowed, even if they shrunk from encouraging, their rank and file to send their children to the schools, and would have availed themselves of the facilities afforded for imparting religious instruction there. Few did so.

The majority did not resist the temptation to labour to retain their separate, and they made war to the knife against the national, schools. Among other denominations, whose numbers in the census were small, there was less active opposition, though even with some of them it seemed a pang to part with control.

The Government went as far as it could to secure confidence in its intentions. Plunkett, the upright and honoured Attorney-General, a Roman Catholic, was made Chairman of the National Board. Nicholson and W. S. Macleay, the other members of the Board, were high in reputation. Plunkett's position and character made it difficult for his fellow-churchmen, however bigoted, to denounce him. They paltered with the Government in a double sense. Where they could obstruct with the hope of obtaining special advantage they did so. In other places they seemed not hostile to the national schools. To an inspector who asked a country priest if he would attend a meeting and support the formation of a school founded on the principles which the priest admitted to have done much good in Ireland, the reply, in rich brogue, was, "You see it's just this way. I don't know what the bishop will say; and what the bishop'll say—I'll say." [1]

Vainly were the "denominationalists" (as the advocates of separate schools were called) warned that in time the expense and the inferiority of numerous petty schools would create a public determination to establish a common system; and that, whenever that time might come, such a system would be intensified in its secular nature exactly in proportion as resistance to the common wish might harden the public mind against those to whose obstinate resistance would be due the necessity of setting aside selfish or separate claims incompatible with efficiency or economy in public schools. In the fulness of time, notably in Victoria, the warning became a true prediction.

It may be well at this stage to refer to a strange repudiation by the settlers at Port Phillip of their constitutional rights and

[1] He kept aloof from the meeting; but one of his flock proposed and a Presbyterian seconded a resolution (carried unanimously) to establish a national school. The Inspector was in the chair at the meeting. There was a small Roman Catholic school in the place, and a Committee had been appointed for an incipient Church of England school. Members of the Committee became local patrons of the national school. This was in Port Phillip in 1849, and illustrates the state of feeling in the country.

duties. On the 20th July, 1848, the returning officer held a meeting for the nomination of candidates in Melbourne for the new Council. Five members were to be returned for the electoral district of Port Phillip. A former member declared that the representation in Sydney was a mockery, and therefore he would not stand. One candidate, Mr. J. V. F. Foster, was proposed, but after a short time his proposer and seconder withdrew his name and the writ was returned blank. There was one member to be returned for Melbourne. Mr. Foster was nominated on the 25th July, and the repudiators of representation, unable to stay his election otherwise, proposed "the Right Honourable Henry Grey, Earl Grey in the peerage of Great Britain." A poll was taken, which gave 295 votes to Earl Grey, and 102 to Mr. Foster. Protests were made against the reception of votes for Earl Grey on the ground that he was incapacitated for election by being a member of the House of Lords, by being unqualified according to the local law, &c. &c. The name of Mr. A. F. Mollison, one of the most intelligent settlers in the district, was appended to one of the protests. The returning officer, the mayor, averred that decision on the protests did not rest with him but with the Government, and the writ was returned with the name of Earl Grey.

On the 31st July a public meeting was held, and a lengthy memorial addressed to Earl Grey was adopted in justification of the course adopted. He was told that his name was "held in the greatest respect throughout the proceedings," which were intended to prove that Port Phillip elections were a farce. Mr. Latrobe, the Superintendent of the province, could not but regret the "improper, impolitic, and absurd" result, and foresaw that the task of governing so impulsive a community as a distinct colony would be greatly difficult on whomsoever it might fall, if the control of affairs should be taken from a Governor, Executive and nominee Council, and a representative body should be substituted for the latter. The law officers in Sydney were of opinion that nothing in the Constitution Act (5 and 6 Vict. cap. 76) prevented the election of a peer of the United Kingdom, and that it could not be taken for granted that Earl Grey was not possessed of the local property qualification required by the law. Sir Charles Fitz Roy transmitted the unwieldy memorial of Earl Grey's illogical constituents, and informed him that, attributing

the failure to elect members for the province to "sudden impulse," he had issued a fresh writ, changing the place of nomination to Geelong, and appointing the principal polling thereat.

The opponents of representation held a meeting in Melbourne on the 13th September, and resolved to re-enact the sorry farce of electing impossible members. Mr. Edward Curr, the father of separation, Mr. O'Shanassy, whose ability had made him conspicuous, and others of less note, including the dull McCombie, took part in the proceedings. It was determined to nominate five members of the British Cabinet. Mr. G. W. Cole, a well-meaning sailor; Mr. J. P. Fawkner, who had followed Batman to Port Phillip in 1835, and was loquacious on all public subjects; and Mr. J. S. Johnston, were deputed to proceed to Geelong to conduct what was called the "non-election" campaign. On the 21st September, Dr. Dixon, Dr. J. F. Palmer, and Messrs. Edward Curr, J. Williamson, and Lachlan Mackinnon were nominated. The renegades from representation were indignant when Mr. Curr permitted himself to be nominated. Dr. Palmer was known to be one of the most intelligent of the settlers. The Duke of Wellington, Lords Palmerston, Brougham, Russell, and Sir Robert Peel, were nominated. A disorderly public meeting was held, which ended in confusion. At the polling it was found that a majority refused to put from them the privileges accorded to them by the law of the land. Two hundred and thirty votes were given for the local candidates, and fifty-eight were recorded for the absentees. McCombie wrote a long letter to Mr. Hawes (Under-Secretary for the Colonies) in vindication of the absurdity of which his accomplices had been guilty. It was probably unread by Mr. Hawes, and in 1858 McCombie printed it without apology in his 'History of Victoria.' He declared that he was neither frenzied nor fanatical: victimized and oppressed he would shake off his oppressor.[1]

[1] Mr. Fawkner, in a long letter, which he wrote to Earl Grey in 1851 about Crown lands (full of egregious mistakes), declared—"We of Victoria elected your Lordship." . . . "Victoria, by me, sincerely thanks you and your colleague Lord John Russell for the Bill granting us separation from Sydney. . . . The stand you made, to prevent the Colonial Council from dividing the lands of this fertile country amongst themselves, their friends and dependents, deserves and receives from every dispassionate man of sense in this colony their warmest approbation." (Parliamentary Papers,

There was one redeeming feature in the farce. Mr. Robert Lowe, who had warmly supported the separation of Port Phillip, declined to associate himself with those who unworthily refused to exercise their franchise.

With the establishment of reasonable relations between the nominee representative of the Governor in the Legislative Council and the elected members, much of the peculiar interest which attached to the creation of an electoral body in 1843 disappears. Enough has been said to show how in each colony the body politic grew and was modified. In future the general legislation may be lightly passed over.

The questions of occupying Crown lands, and of their sale, have been touched upon sufficiently to show their different treatment in different provinces. In Van Diemen's Land there was no real difficulty. In South Australia prudence had prevented one. In New South Wales and Victoria dragon's teeth had been sown, and the rush of gold-seekers was about to exacerbate strife. By the side of the land question was the exciting topic of transportation. About to control all methods of dealing with public affairs was the subject which, under the head of 'Alterations in the Constitutions of the Australian Colonies,' fills volumes of Blue-books, and occupied men's minds from Moreton Bay to Swan River, and in Van Diemen's Land.

It may be well to trace briefly the course of events. How Wentworth led the way; how the callow South Australia chirped in concert soon after it was hatched; how even the convict-burdened Van Diemen's Land claimed to elect its lawmakers, has been seen. Even the petty cygnet of Swan River sang the same song before it was fledged or could procure its own food. In 1835 about "one-third of the adult male population"[1] claimed its "right of returning representatives by suffrage." The mild Lord Glenelg replied, "I cannot conceive that in its present state the colony is fitted," &c. For a time the aspirations of colonists were lulled, if not contented, with the new constitutions established under Lord Stanley's Acts in 1842.

vol. lxiii. 1853). Mr. Fawkner was not dispassionate, and in 1852 was to be found railing at Earl Grey's land orders. Yet his object was in 1851 and 1852 the same, viz. to assert the rights of freeholders against those of squatters.

[1] Despatch. Governor Stirling to Lord Glenelg. 15th October, 1835. Parliamentary Papers, vol. xxix. 1846.

The experiment was made in New South Wales. The power to make it was not put to use in South Australia. Van Diemen's Land stood apart. Yet in 1835 and in subsequent years there were petitions, and Colonel Arthur, while giving good reasons for non-compliance, avowed that he was "not prepared to say that he did not respect the passion of the inhabitants for British institutions." Lord Stanley in 1842 sent to the Governor of Van Diemen's Land a copy of the Act of 1842 (5 and 6 Vict. cap. 76) which conferred elective powers on New South Wales, and informed him that the "sole reason for which" it was not extended to Van Diemen's Land was the incompatibility considered to "exist between the grant of such a form of constitution and the continuance of transportation to the colony." The petitioners professed not to perceive the incongruity. During the government of Sir Eardley Wilmot both Lord John Russell and Lord Stanley impressed upon him the propriety of establishing municipal institutions.

It was rightly thought that the exercise of local powers would be the best gateway through which the community might be led to use the wider responsibility of general representative institutions. Yet even in New South Wales the District Councils died of inanition. During Lord John Russell's Ministry (1846 to 1852) it devolved upon Earl Grey to deal with the whole subject of Australian Constitutions. The favourable disposition of Lord Stanley to the separation of Port Phillip from New South Wales, the joy with which that separation was anticipated in Melbourne, and the recommendation of Gipps and his Executive Council that it should be granted, have been mentioned.

Earl Grey could scarcely retreat from the position of his predecessor, and the time seemed to him appropriate for extending to Van Diemen's Land and South Australia the form of government established in New South Wales, as well as for offering it to "Western Australia as soon as its inhabitants should be prepared to take upon themselves the expenses of their civil government instead of having them provided for by a parliamentary vote." [1]

The recommendations of Sir George Gipps and his Council were lauded highly in a despatch (31st July, 1847), in which Earl Grey announced the intentions of the Government. Port

[1] 'Colonial Policy,' &c. by Earl Grey, vol. ii. p. 89.

Phillip would be separated, and "by Her Majesty's gracious permission receive the name of the province of Victoria." The advice of Sir George Gipps as to the boundary between Victoria and New South Wales, and financial adjustment, would be regarded. It was intended to return in all the colonies "to the old form of colonial Constitutions" by establishing two Houses, one nominated by the Crown, the other elected by the people. Earl Grey thought the practical working of the Sydney Legislature, in which the representatives and the nominees sat in one chamber, did not justify its continuance. The new Constitution would aim at founding municipal institutions, and make them bear the relation of constituents to the House of Representatives. Some method would "be devised for enabling the various Legislatures of the several Australian colonies to co-operate with each other in the enactment of such laws as may be necessary for regulating the interests common to those possessions collectively; such, for example, are the imposition of duties of import and export, the conveyance of letters, and the formation of roads, railways, or other internal communications traversing any two or more of such colonies."

The subject of imposing discriminating duties in any Australian colony on goods the growth, produce, or manufacture of any other Australian colony (submitted by Sir Charles Fitz Roy in September 1846), would be provided for by the creation of "a central legislative authority for the whole of the Australian colonies." Earl Grey's despatch was published for the information of colonists, and provoked a storm of opposition. A great meeting was held in Sydney in January 1848. Men of various callings denounced the scheme for depriving existing electors of their rights by transferring their functions to the municipal representatives. The District Councils were odious in their eyes. To construct other similar bodies was repugnant to their wishes, and hostile to their interests. They besought the Queen not to assent to any change in their Constitution to which the general body of the colonists had not assented. The mayor presided. Among the early speakers was Mr. James Martin (afterwards Chief Justice), who battered down, with the authority of Story the great jurist, and of Edmund Burke, the sophistries by which Earl Grey had endeavoured to justify the strangling

of the elective principle. Mr. Stuart Donaldson (who was to become the Premier of the first responsible Ministry in 1856) moved, "That the proposed measure will have the effect of depriving the colonists of the elective franchise, which we maintain to be our inalienable right as British subjects."

Richard Windeyer had passed away, but Donaldson evoked a storm of applause by recurring to Windeyer's labours in "battling for that freedom which we have now gathered together to protect."

William Wentworth warned his countrymen against the disastrous effects portended by Earl Grey's scheme. Unhappy France was bound in chains by similar means. "Tell the Minister formally and boldly that you love constitutional freedom too well not to abhor his measure, and that you will have none of it." Mr. Michie (a barrister who was long afterwards Attorney-General in Victoria) denounced the political quackery of a scheme calculated to enslave the community. Mr. James Macarthur, as an Australian, entered his solemn protest against the attempt to subvert the constitutional liberties of his country. Mr. Robert Lowe appealed to the people to

"put it from them as a thing accursed, and have no part whatever in working it. Let them leave the wretched offspring of tyranny and indolence still-born,—dead. Let them, when they find the colonists will not pollute their souls by putting any of its foul provisions into operation, take their scheme back amidst the shouts of ridicule which shall reverberate throughout the empire."

Mr. Kemp, Mr. Holden, Mr. Cape (who as head-master of the principal school or college had won the affection of all), Mr. Thacker (a merchant), Captain Rossi (of Goulburn), Dr. Bland, Mr. Norton (a solicitor of high repute), Mr. Edward Cox (of Mulgoa), and others, took part in the unanimous proceedings, which Sir Charles Fitz Roy represented to Earl Grey as deeply significant. The Earl and his colleagues drew back. He told Sir Charles Fitz Roy (July 1848) that he "continued to believe" that his municipal scheme and a Legislature emanating from the municipal college were desirable, "but I can have no wish to impose upon the inhabitants of the colony a form of government not in their judgment suited to their wants, and to which

they generally object." The division of the Legislature into two chambers, concerning which Sir C. Fitz Roy had agreed with him, he would leave it in the power of the colonists to effect. His measure was to be little more than an enabling one. He would proceed with it in 1849. Van Diemen's Land and South Australia would fall within it. He wrote to the Governors there informing them why the Legislatures would be framed on the model extant in Sydney, and that popular representation in the younger colonies would be introduced by the addition of elective members to their existing nominee Councils, bearing the same proportion as in New South Wales, *i. e.* two-thirds elected, and one-third nominated by the Crown. Western Australia, not included, of necessity, in the boon, was to be empowered to grasp it when the inhabitants might by petition seek it, and undertake the charges previously met by Parliamentary grants.

It had dawned upon the Ministry that their task was too important to be entrusted to the crotchetty Earl Grey, and on the 31st January, 1849, the Queen called upon the Committee of the Privy Council on Trade and Plantations for a report. Lord Campbell, Sir James Stephen, and Sir Edward Ryan were added to the Committee specially to aid in dealing with the Australian problem. The report was made on the 4th April, 1849.[1] It recommended separation of Port Phillip, under the name of Victoria, and with the boundary proposed in 1840 by Gipps and his Executive Council. "It would commence at Cape Howe, pursue a straight line to the nearest source of the river Murray, and follow the course of that river as far as the boundary which now divides New South Wales from South Australia."[2] To bind Earl Grey to keep the peace, the Committee availed themselves of his assurance to Sir C. Fitz Roy that in effecting changes in the Constitution of the Legislature it was "not incumbent on the Legislature at home to press them on an unwilling or even on an indifferent people." This "language, in the wisdom of which we entirely concur, will of course be regarded

[1] Parliamentary Papers, vol. xxxvii. 1850.

[2] The demarcation was difficult in the broken country between Cape Howe and the Murray. It was not completed till 1872, by Messrs. Black and Allen, surveyors.

by your Majesty as an engagement to which it is necessary strictly to adhere." As custom appeared to have attached the colonists to one House, embodying nominated and elected members, it would be unwise to do more than to enable the local Legislature to resolve their single chamber into two, in New South Wales, and to afford like facilities elsewhere.

Her Majesty would thus afford free scope for public opinion everywhere. On one point they would keep back authority to effect changes. They objected to unrestrained power in "a subordinate Legislature," to enlarge or alter "any of the constitutional franchises conferred on it by Parliament, without either the express or the implied assent of the Queen, Lords, and Commons, of the United Kingdom." Changes in one colony might

"affect the interests of other British settlements, adjacent or remote. They may be injurious to the less powerful classes of the local society. They may be prejudicial to your Majesty's subjects in this country, or they may invade the rights of your Majesty's Crown. We think therefore that no Act of any Australian Legislature, which shall in any manner enlarge, retrench, or alter the Constitution of that Legislature . . . or which shall be in any respect at variance with the Act of Parliament or other instruments under which the Legislature is constituted, ought to be of any validity, until expressly confirmed and finally enacted by your Majesty in Council."

The District Councils existing (in point of law), might for practical purposes "be regarded as extinct." Yet efficient municipal bodies were "scarcely less necessary to the public welfare" than representative Legislatures. They would be the "only practicable security against the danger of undue centralization." As guardians of public rights and schools of legislators, they were essential. But neither the Crown nor Parliament would "desire to force unwelcome duties on Australian colonists, under the name of franchises. If such duties are not undertaken with alacrity, performed with zeal, and controlled by public vigilance, they would be undertaken to no good purpose, and would be better declined."

To remove existing objections of those unwilling to impose rates on their comparatively small holdings, surrounded by millions of acres of untaxed wild lands, the Committee recom-

mended that the moiety of the Crown land revenue, not devoted to immigration, should (subject to the recognized primary charges) be "placed at the disposal of District Councils for objects of local concern," but applicable exclusively to public works—each district receiving its quota according to the amount of territorial revenue realized within it. As a relief to the central Government, an incentive to the acceptance of corporate franchises, and a means of improving the territory, such a dedication of the land fund would serve many important ends. There was in the (New South Wales and Van Diemen's Land) Constitution Act of 1842, a reserved Civil List. Schedule A provided for the Governor, the Judges, and the administration of justice, specified sums amounting to £33,000. Schedule B provided in like manner for the departments of the Colonial Secretary, the Treasurer, the Auditor-General, the Clerk of the Executive Council, and £3000 a year for pensions. Schedule C devoted £30,000 to public worship; and, under sanctioned regulations, the sum was allotted to "the Churches of England, of Scotland, and of Rome, and the Wesleyan Society."

The Committee apparently saw no incongruity in such an allotment with the terms of the Act of Settlement, and declared emphatically, that "the vested rights which individual clergymen hold under the New South Wales Constitutional Act ought, we apprehend, to be maintained inviolate." They thought that to each of the four Churches the share possessed should be secured for an indefinite period. If other Churches should thereafter be endowed by a Legislature, there should be additional provision, so that no deduction might be suffered by any of the four. They did not propose to set apart any sum for public worship in South Australia and Van Diemen's Land, but to provide that the new Constitution should not interfere with any laws extant therein. As to the large proportion of the revenue of New South Wales, withdrawn from the control of her Legislature by the Civil List, and denounced so often by Wentworth, they could not conceal their "opinion, that these complaints are not without some foundation." They would enlarge the power of the local Legislature, would in the first instance appropriate a sum "for those services, which it would be inexpedient to leave to be provided for by annual votes,"

and would accord to Legislatures full power to alter such "appropriation by laws to be passed in the usual form." Instructions should be given to Governors, restraining them from assenting to such laws without authority of the Crown.

"Men who have abandoned other prospects for the purpose of accepting colonial employment, which they had reason to expect would be permanent, and who have since faithfully discharged their duties, must be regarded as having claims, which rest upon the ground of public faith, and on contracts which on their side have hitherto been strictly fulfilled, to retain their present salaries or to receive adequate compensation for their loss."

They foresaw a difficulty which in after years justified their prediction.

"If, when Victoria shall have been separated from New South Wales, each province shall be authorized to impose duties according to its own wants, it is scarcely possible, but that in process of time differences should arise between the rates of duty . . . So great would be the evil, and such the obstruction of the inter-colonial trade, and so great the check to the development of the resources of (New South Wales, South Australia, and Victoria), that it seems to us necessary that there should be one tariff common to them all, so that goods might be carried from one into the other with the same absolute freedom as between any two adjacent counties in England."

Van Diemen's Land should be included under the "uniform tariff" established by Parliament, with a proviso deferring its operation until twelve months had elapsed from local promulgation of the Act. Alteration in the tariff might be entrusted to an authority created "to act for all those colonies jointly." With that view the Governor of New South Wales should be made Governor-General, and authorized to convene a "General Assembly of Australia" at any time and place deemed proper by him. The General Assembly should consist of himself, and the single House of Delegates, consisting of not less than twenty, nor more than thirty members, elected by the Legislatures of the different Australian colonies. Each colony should send two, and one additional member for every 15,000 of the population according to the latest census.[1] The authority of the Assembly

[1] The proportion in 1849 under this provision would have been 12 members for New South Wales, 4 for Victoria, 4 for South Australia, and 5

was to range over ten subjects:—customs' duties; postage; roads, canals, or railways, common to two or more colonies; beacons and lighthouses; shipping dues; a General Supreme Court of original or appellate jurisdiction; the determining of the extent of such jurisdiction; weights and measures; laws affecting all the colonies on occasion of addresses from all inviting legislation; and the appropriation of sums necessary to the enumerated objects on "an equal per centage from the revenue received in all the colonies." Thus they hoped to accomplish important objects without creating a central Legislature in opposition to the separate Legislatures, and without inducing "collisions of authority."

Earl Grey transmitted the report to Sir C. Fitz Roy in May 1849, informing him that a Bill to give effect to it would be introduced forthwith. But in August he wrote: "Heavy pressure of business of a most urgent character" made it impossible to deal with it. Europe was convulsed. The day of Novara hurled Charles Albert from the throne which was to be established on wider foundations by his son. Rome, in spite of her modern triumvirate, Mazzini, Saffi, and Armellini, and of the impassioned Garibaldi, was occupied by the insulting Gaul. Martial law reigned in Prussia. Russia despatched her legions to aid Austria in putting down Hungary. Louis Napoleon, the French President, declared Paris in a state of siege, and newspapers were suppressed. The fluttered continent in six months invested £22,000,000 in English securities, and Lord Malmesbury, an aspirant to office, bewailed the condition of England. If free trade were consummated, she would "return to her normal and natural state—a weather-beaten island in a northern sea."

Joseph Hume proposed reforms, which by equalizing electoral districts numerically, would have rooted out the distinction between the English polity and that of the clubs of Paris in 1793. Irish prisoners, confident in the clemency they abused,

for Van Diemen's Land after "deducting convicts." It was not proposed to increase the voting power as in the Southern States of America, where (Constitution, Art i. sec. 2) representatives were apportioned to numbers "determined by adding to the whole number of free persons (excluding Indians) three-fifths of all other persons." Thus the slaves furnished rods for their own backs.

demanded to be executed or released, and a Bill was passed in a day to relieve Lord John Russell from an Irish dilemma. Lord John thought it fit to disclaim the name of "Finality John," while he opposed the charter of the mad Feargus O'Connor. The Roman Catholic Bishop McHale denounced the Established Church as "base and damnable," and poisoning the minds of the young with "loathsome and soul-killing doctrines." Mr. Disraeli, when demanding a Committee on the state of the nation, was crushed not by the Ministry, but by Sir Robert Peel, who in place of returning evil for the intrigue which expelled him from office, "implored the House not to sacrifice nor to barter the glorious heritage you have obtained by your sagacious and most timely policy, for the smallest and most worthless policy for which the greatest advantage was ever surrendered since the days of him who sold his birthright for a mess of pottage."

Standing more by the strength of Lord Palmerston than by their own, the Ministry might fairly plead "urgent affairs" as an excuse for not maturing their colonial legislation. The colonies had furnished matter for reflection. The instigators of rebellion in Canada in 1837-8 had risen to power in the Parliament at Montreal. Commissions had been appointed to report upon rebellion losses, and various Acts had been passed. In 1840 the object in view was to compensate those who had sustained loss in capturing or suppressing rebels. In 1849 Cartier, Papineau, La Fontaine, Francis Hincks, Sauvageau, appeared in a majority of more than two to one who insisted on compensating the rebels for losses they sustained in being suppressed. Vainly did Sir Allan MacNab, Mr. Cayley, Colonel Gugy, Mr. Prince, Mr. Macdonald, Mr. Robinson, Mr. Badgley, and others strive to confine the compensation to those "not implicated in the rebellion."

On the 9th March, 1849, the Bill passed the Assembly by forty-seven votes against eighteen, and when Lord Elgin, the Governor-General, gave the Royal assent to it, on the 25th April, he was hooted and pelted; the Parliament was routed, and the House of Assembly was burnt. The 'Montreal Gazette' called on Anglo-Saxons to drive away the puppet who had made "rebellion the law of the land." Ministers' houses were attacked. It was by advice of Earl Grey and Lord John Russell

that a civilian superseded Lord Cathcart, as Governor-General, and Earl Grey had communicated didactically his opinions on responsible Government before Lord Elgin sailed to Canada. The revolution in France in 1848 alarmed the Earl, but the French colonists did not manifest the republican fervour he expected, and he slept in peace till the echo of the crash of the Parliament House at Montreal disturbed him. Lord Elgin, conscious that he might be unable "to recover that position of dignified neutrality between contending parties which it had been his unremitting study to maintain," volunteered to make way for another.

The House had moved an address of confidence in him. The members who had carried the Bill which was to compensate the rebels supported the Address. The minority, expressing their abhorrence of lawless violence, and their readiness to aid in repressing it, resisted vainly the praise of the Governor, which the majority in strong language declared. Lord Elgin said there were three parties in the minority;—Sir Allan Macnab and his friends, who were consistent in their proceedings;—his late Ministers, whose course was unintelligible; and Papineau, the rebel, who in the final division voted with the opposition to the Address.

"Mr. Papineau's vote (he added) conveys a useful lesson which will not, I trust, be lost on persons who had been induced to believe that the persecution of which I am now the object is really attributable to my having shown undue lenity to those who were led by him into rebellion." [1]

[1] It is singular that Lord Elgin, who was keenly alive to the "wanton act" which "destroyed public property of considerable value, including two excellent libraries," in Montreal, in 1849, became, in 1861, a prime agent in a greater crime at Pekin. By him and Baron Gros was demanded and executed the worst act of its kind committed since the destruction of the Alexandrian library by the Mahometans. The Yuen-min-Yuen Palace, with all the works of forty centuries ranged in their chronological order in spacious halls; the descriptive catalogues which themselves occupied many rooms, and enabled the visitor to trace the progress of the most ancient civilization;—were ruthlessly levelled. Scattered relics plundered by the soldiery became no longer useful as guides in marking national development, and priceless treasures were consumed by the flames. If Lord Elgin's father received hard measure from Byron for the plunder of Athens, the son vindicated the claim of the family to live with Eratostratus "in many a branding page and burning line."

These events are only important in these pages as showing how seriously colonial questions occupied the Russell Administration in 1849. They were hotly debated in Parliament. In the same year the Cape Colony successfully denounced and averted Earl Grey's attempt to land convicts on their shores. Australian questions were also raised. Mr. Francis Scott moved for a Select Committee, with the object of enlarging the functions of local Legislatures. Mr. Joseph Hume (16th April) seconded Mr. Scott's motion, but Mr. Scott's speech was spoken to benches almost empty. Mr. Hawes replied. Mr. Gladstone concurred with much which fell from Mr. Hawes, but protested against that gentleman's doctrine that Parliament had "no right to act upon any question which the Legislature of a colony was discussing. . . "I hold that freedom is the principle on which our colonial policy ought to be founded, but at the same time that freedom must necessarily confine itself to local concerns, and Imperial questions it cannot and ought not to touch." Sir William Molesworth and others spoke, and Mr. Scott's motion was rejected by 81 votes against 34.

On the 16th June Sir William Molesworth presented a petition from persons in New Zealand, and contributed an essay rather than a speech in moving that the Queen be asked to appoint a commission on colonial complaints. 'Hansard' borrowed the so-called speech from a "printed report." The essayist designated the communities in Australia as "the offspring of convict emigration, more hideously vicious than any recorded in sacred or profane history," and spoke of "convict emigration one day abolished to the joy of the colonists of Tasmania, the next day renewed, to their horror and amazement." He did not explain how, if the community was such as he described, it could feel horror or amazement at the sight of English criminals. After speaking for hours he "hoped he had succeeded in giving the House a clear notion of the object of his motion." Mr. Hume, who thought he understood everything, seconded the wordy baronet; and Mr. Hawes replied. He stated that Sir James Stephen had drawn up the report of the Privy Council, and he declared that Sir W. Molesworth's proposition was "a dream and a delusion." Mr. Gladstone asserted that the House of Commons was "entirely at sea with respect" to the Australian Land Sales Act of 1842, and supported the motion. Lord John Russell,

having nothing particular to say, said generally that he trusted to the operation of the principle of self-government; and Sir W. Molesworth's motion was rejected by 163 votes against 89.

Unable even with the support of the report of the Privy Council to deal with the constitutional difficulty, Earl Grey wrote in August 1849 that he proposed to bring forward a Bill in 1850 which would, with one exception, be substantially the same as that of 1849. He would omit the provision for an uniform tariff, inasmuch as, without subsidiary arrangements, which could be only matured in the colonies, he could not carry the project into effect. He redeemed his promise early in 1850.

On the 18th February, Mr. Hawes moved the second reading of an Australian Colonies Government Bill. Mr. Scott assailed it because it contemplated a mingled chamber of nominees and elected members, and moved for a postponement, to which Mr. Labouchere objected. Mr. Roebuck attacked the blighting influence of the Colonial Office, and denounced the Bill as an abortion. Lord John Russell defended it on the ground that it consulted the desires of the colonists as to the constitution of the Legislature. Mr. Frederick Peel, Sir William Molesworth (who advocated colonial representatives in the Imperial Parliament), Mr. Anstey, Mr. Mangles, Mr. Hume, Mr. Hawes, Mr. Adderley, and others spoke on the Bill, which was read without a division. Attempts were made in March (22nd) to strike out the nominee element in a single chamber, and to constitute two chambers, one nominated and one elected; but they failed, after lengthy discussion in which Mr. Gladstone advocated the formation of an upper chamber on an electoral basis. No less than 147 votes were given against the clause in the Bill, and 198 supported it. Cobden and Adderley voted with John Bright, Mr. Newdegate, Mr. F. Peel, and Mr. Gladstone for the amendment; W. J. Fox, Lord Palmerston, Sir Robert Peel, Mr. Ricardo, Mr. Pusey, and Lord John Russell supported the Bill. In April (19th) Sir William Molesworth returned to the charge, aided by despatches which proved that more than one Australian Governor advocated two chambers, and, after much discussion, 150 members voted for an amendment and were defeated by 218. Lord George Manners, Mr. Cobden, and Mr. Bright found themselves in the lobby with Colonel Sibthorp, Sir W.

Molesworth, and Mr. Adderley. The Ministry defended their measure by pleading that it left the existing Constitution in New South Wales as nearly as possible untouched, while conveying power to effect further changes by local methods. Mr. Lushington strove to strike out the provision in the Civil List for support of religion, but found few friends. An attempt was vainly made (25th April) to strike out clauses which provided for a federal assembly. Sir W. Molesworth wearied the House with another essay in moving vainly (6th May) that the Bill be recommitted. Mr. Gladstone failed on the same day to introduce clauses to enable members of the Church of England by voluntary compact to regulate their affairs in the colonies. By 187 votes against 102 he was defeated. Mr. Labouchere thought the subject ought to be left to local legislation. On the 13th May, Mr. Gladstone earnestly pleaded for postponement of the third reading in order that the Bill might be considered in the colonies. He obtained 128 supporters, but the Government had 226. Mr. J. E. Denison strove to insert a clause to give the management of waste lands to each colony, but was beaten by nearly three to one; and the Bill passed on the 13th May, after having attracted more attention than Australia had received since Pitt annexed it to the dominions of the Crown. In the House of Lords, Lord Brougham presented a petition from persons who asked to be heard at the bar by counsel on the Bill, and moved that they and Mr. F. Scott be heard. Earl Grey intimated that if instructions from the Legislative Council in Sydney had impelled Mr. Scott so to apply he might have been heard, but he had no such instructions. Earl Grey opposed Lord Brougham's motion. The other petitioning persons included Mr. Robert Lowe, who had shaken the dust off his feet, and left the colony full of admirers of his talents and distrusters of his principles. Lord Monteagle entreated the House to hear the petitioners, but after considerable discussion it refused to do so. Lord Monteagle and two others protested against the decision of the House. The Bishop of Oxford (Wilberforce) essayed to hamper the progress of the Bill by a reference to a Select Committee. From *a priori* arguments he satisfied himself that one chamber containing mingled nominees and representatives must give rise to angry contests, and finally result in the constitution of "a chamber on

the merest democratic basis." Thus he spoke, ignorant that under the tact of Fitz Roy and the suave sufficiency of Deas Thomson, experience rebutted his theory. He contended for two separate chambers, both elected. He declared that the franchise in the Bill had been fixed too low. He denounced as mischievous the framing of a Constitution with provisions enabling the colonists, and thereby inviting them, to try their 'prentice hands in disorganizing it at once. The great object ought to be to reproduce England abroad—"to send out representatives of her various ranks and orders."

Earl Grey replied to the Bishop. "As to Mr. Lowe, he happened to know that he had tried to get up a public meeting before he left and had failed for the reason, as stated in one of the papers, that the people did not trust him in consequence of his political tergiversations." He admitted that the power to form a federative council (condemned by the Bishop) was "no vital part of the measure," and Lord Stanley applauded the admission. The last-named nobleman declared that he would not oppose the progress of the Bill if Earl Grey would consent to the separation of Port Phillip, would extend to Van Diemen's Land and other colonies the existing institutions of New South Wales, and would reserve for Parliament power to make such arrangements with regard to a second chamber as might be desirable. But he objected to the federal clauses framed "without adequate information." He condemned the extravagance of demitting to "a single legislative body in a colony" the power of "determining whether there shall be one or two legislative chambers." "I believe I am warranted in saying that there is no instance on record of a single chamber having volunteered to abdicate its power for the purpose of interposing if not a monarchical or aristocratic, at least a conservative, check to the democratic tendency of the chamber itself." By 34 votes against 21 the Bishop of Oxford was defeated.

On the 11th June Lord Monteagle moved an amendment to the effect that there should be two chambers. He taunted Earl Grey with constitution-mongering, and asked why, having warmly advocated two chambers in July 1847 he abandoned them in 1850. Lord Monteagle admitted that the colonists had entreated the Home Government not to alter their Constitution

without their consent. But why? Because Grey had alarmed them by proposing "to inflict upon them that most desperate of all quackeries, the system of double election—providing that the people should elect Municipal Councils who, in their turn, were to elect the Assembly."

Earl Grey did not reply to his critic, but sheltered his Bill under the plea that he now desired to respect the expressed wishes of the colonists. With unhappy ineptitude he pronounced that it was as impossible to transplant English institutions as to create one of the magnificent oak-trees planted at the time of the Conquest which were now crumbling into dust. Nature, strong to reprove him, proved that millions of younger trees, sprung from the vital principle of the acorn, had risen and were rising to refute him; and the aspirations of mankind glowed with equal flame in every clime, recognizing the distinction due to noble worth. Lord Abinger declared that Earl Grey had chosen the worst way of governing by giving a single chamber power to make future changes which would lead to making the "Constitution in fact a mere democracy." Lord Lyttleton advocated the prescription of legislative machinery for two chambers, leaving it to colonists to decide how they should be constituted. The Earl of St. Germains and Lord Wodehouse supported Lord Monteagle, whose amendment was rejected by 22 votes against 20. In professed deference to Lord Lyttleton, Earl Grey consented to lower the franchise proposed for New South Wales, which he had "always thought too high." Lord Lyttleton failed to carry a clause empowering Governors with advice of their Legislative Councils to repeal the Crown Lands Sale and the Waste Lands Occupation Acts. The Bishop of Oxford vainly strove to carry a clause to relieve the Established Church "from the restrictions imposed by the statute laws passed to regulate the Church since the Reformation."

On the 14th June, Lord Stanley failed (on a division of 23 against 22) to strike out the "rash and perilous innovation" by which the Bill provided for a General Assembly consisting of the Governor-General and a House of Delegates from each colony. But Earl Grey submitted to some changes. He lowered the household franchise from £20 to £10; he admitted licensees on Crown lands to it; and the House eventually

eliminated the federal clauses. Nevertheless Lord Lyttleton opposed the third reading, which was carried on the fifth of July.

On the 1st August Mr. F. Scott opposed in the Commons the Lords' amendments. Mr. V. Smith did not object to the elision of the "federal clauses," but pointed out that in the Commons they had been carried "by a majority of six to one." Lord John Russell proposed that the House should agree to the Lords' amendments. Mr. Gladstone objected to the "false principle of hoping to check democracy by influences from home." He wished to check democracy in New South Wales; but he wished to see it checked by stable institutions springing from the soil rather than by influences from the Crown, and enactments from Downing Street, which only tended to give a more wildly-democratic character to the feelings of the people and to weaken the ties which should bind the colonial community to the mother-country." He protested against the measure. Mr. Roebuck protested also; but the Lords' amendments were adopted, and on the 5th August the Bill received the Royal assent.

The fate of the District Councils so dear to Gipps was remarkable, and forms an instructive chapter in the history of institutions and of Englishmen. The seeds of local government, which not even the Norman Conquest destroyed, germinated with the recovery of a national character, when the Conqueror's successors found it needful to rely upon the people in contending with their great feudatories. A great writer [1] has proved that the cohesion of the Saxon nation was greatest in the lowest ranges, and that thence sprung the vigour with which the people were compacted under the Norman rule which was strongest at the top. In the colonies there was no such cohesion, and there never had been. The English township, with its united inhabitants, and its moot; the hundred, with its larger system, overlooked by the still wider machinery of the shire, averted national decay and contributed to build up a national polity when the evil days were passed. In Australia the Governor, on behalf of the Crown, advised everything, and did everything throughout the territory. Until Governor King imposed customs' duties (in the beginning of the 19th century) by arbitrary edict, there was no contribution to a

[1] Stubbs.

revenue in the colony. The money which was spent was the fruit of bills drawn upon the Treasury in England.

Settlers looked to the Government for everything, and the habit grew into a disease. They lost the love of English institutions. Between widely-scattered holdings men passed over tracks through the forest, innocent of causeways, bridges, or culverts. The Government was expected to do all public work. In isolated cases the Government invited aid, but that aid was the voluntary grace of a few. There was no machinery by which aid could be obtained from the many. Indolence succeeded absence of responsibility. It would have been better for the settlers to have controlled the expenditure of a hundred pounds raised amongst themselves, than to see many times that amount expended amongst them by a central authority. The Government was poor, and could do little. The settlers in districts which were only known by lines on a map, were captious in urging their wants. They felt no shame in begging. They shrunk with horror from local taxation, and they found in the Constitution Act of 1842 sound reasons for refusing to call District Councils into life. The Governor could create Councillors on failure of election, and the Governor could issue warrants to levy local rates. The large lands of the Crown within a district could not be taxed. The facts, when examined, are intelligible, but they are curious. A Government was endeavouring in principle (though with fatal errors in detail) to divest itself of central control. An Anglo-Saxon people refused to exercise the rights of its forefathers. Dependence had passed into its spirit.

The new Act contented itself with empowering the Governors to grant charters of incorporation on petition from inhabitant householders. For New South Wales, for the separated Victoria, for Van Diemen's Land, and for South Australia, like Legislatures were prescribed. The warnings of Lord Stanley were unheeded. No encouragement was afforded to those who might desire to see in a colony a reproduction of hereditary orders on the principle which has maintained those orders through evil and good report in England, exempt from no taxation, and sharing with all classes the burdens of all public duties. The crude remark of Earl Grey that an oak-tree eight hundred years

old could not be transplanted, deterred neither him nor others from sowing some seeds which were to produce fitting fruits in after years in the colonies. He would not plant the acorn in the hope of adorning the Southern hemisphere with the oak, but he gladly worked with those who cared not how many tares he mingled with the harvest which was to be reaped. Knowingly or unknowingly, he lent himself to the task of sowing the seeds of democracy in the Australian colonies. It mattered not to him that the one great jurist, constitutional lawyer, orator, and patriot, whom the colonies possessed had raised a warning voice at the general election in Sydney in 1848, and declared that with the "changing migratory population" a £20 household suffrage was low enough, and that only the freehold suffrage should descend so low as £10.

Earl Grey jauntily cut down the general suffrage to £10. The development of the popular elective principle to the uttermost was assured, and was hastened by his act. He either did not comprehend the blessings which England had derived from encouraging worth by hereditary honours, or he ignobly grudged to the colonies the grace and glory of an institution which, though it might be stained by unworthy members, had ever maintained by its general character the truth of the proverb that noble birth constrains to noble deeds, and had thus presented to the people a high standard of excellence from the days in which Tacitus described our forefathers until now.

The cant of that liberalism whose aim is to destroy the ancient institutions of England was in the heart as well as on the lips of Earl Grey. He enlarged the basis of the future folk-mote of Australia, and he caused it to comprehend those to whom no folk-mote in England would have been degraded. He did nothing to ensure the existence of a Witenagemot.

It were a vain study now to search the records of the time in order to ascertain who were his chief followers. It is at least certain that the heroic Lord Stanley (who died as the Earl of Derby in 1869) redeemed his name from the crass negligence which impelled the House of Lords in vain self-content to sit idly by while England created numerous communities shorn of the most ancient heritage of their race. If there was any feeling that a small copy of a House of Lords might bring its prototype

into contempt by serving as a caricature, it was unwisdom to yield to it. Rather should the members have reflected that if the colonies should prosper under an alien form of government the cry might be echoed back to English shores, "We have discarded hereditary rank and yet live. Let our cousins, the descendants of a common ancestry, do likewise." If after the widest extension of the franchise for the House of Commons, that cry should be answered by a majority told by the head,—"Yes, what is good enough for our cousins, is good enough for us,"—the complicity of Earl Grey and Lord John Russell in the crime will not redeem their heirs from its consequences.

That Earl Grey or any other Minister should have endeavoured to force upon the colonists an hereditary order with legislative functions could be recommended by no one. But that he or others should have endeavoured to create an order which would have received into its ranks the best, the noblest, and most permanent elements in colonial society, can be denied only by those who would prevent a colony from sharing fully the privileges of Englishmen. To confer an ephemeral knighthood upon a Governor, a Judge, or any official who might, as Speaker or otherwise, hold a certain office for a time, was to misunderstand the benefits which a permanent aristocracy reflects upon a community. Yet only in so jejune a manner did England endeavour to satisfy the aspirations of her children abroad. The failure of the attempt to create a Nova Scotian baronetcy in the 17th century was not a failure of the hereditary principle. The effort was made to induce the grantees of titles to emigrate to the colony. No attempt was made to found an order on the spot. To assert that the colonies did not contain fit material is to belie the many estimable families abounding in them. To assert that on abstract principles the attempt ought not to have been made is to impugn the sagacity of one of the greatest of Englishmen (William Pitt), who desired to make it in Canada at the close of the 18th century.

The result of Earl Grey's measures was that England sowed democratic seed, and cast blame upon the crop when its blossom showed what manner of seed had been scattered by Earl Grey and his friends. The remonstrances of Wentworth were one by one neglected in 1850, and (as will be seen) in 1853. The

general provisions of the Constitution Act of 1850 provided that the existing Legislature in New South Wales should decide the number of members of which a new Council was to consist in that colony, and perform the same task for Victoria. On the issue of the writs for the first election there, separation was to be deemed complete. One-third in each House was to be nominated by the Crown. The existing Legislatures in Van Diemen's Land and South Australia were to decide as to the number of members in the new House in each, but they were not to exceed twenty-four. Western Australia was put off until it could defray its own expenses.

The Act reserved a Civil List[1] providing for the Governor, the Judges, some Departments and Pensions, and for Public Worship, in New South Wales, Victoria, and Van Diemen's Land. With regard to South Australia the Act omitted the items of Pensions and Public Worship. Any local Act altering the Civil List was to be reserved for signification of Her Majesty's pleasure. All the colonies were expressly disabled from interfering with the Crown lands or the revenues derived therefrom. In each colony Bills might be passed constituting separate Legislative Houses, but all such Bills were to be reserved for Her Majesty's pleasure.

Besides separating Port Phillip and adopting the boundary recommended by Gipps' Executive Council in 1840, between New South Wales and Victoria, the Act removed the existing restriction (5 and 6 Vict., cap. 76, sec. 51) which prevented the detachment from New South Wales of any territory southward of the 26th degree of south latitude. It brought the possible boundary-line of a northern colony four degrees nearer to Sydney. The 26th degree enabled New South Wales to retain Moreton Bay and Darling Downs, with millions of acres in the interior. The 30th degree would detach the Clarence and Richmond rivers and a large space of the watershed to the Darling from the parent colony, which had spent time and labour in occupying

[1] For New South Wales the total was £73,500
For Van Diemen's Land 41,900
For Victoria 14,600
For South Australia 13,000

them. Men wondered where the process of dismemberment would be stayed.

Some balm was supposed to be poured into the wounds of the mother colony by the appointment of her Governor as Governor-General of all the Australian dependencies of the Crown. He held a separate commission as Governor of New South Wales. He was not, under his commission as Governor-General, to interfere with "the internal interests" of Van Diemen's Land, South Australia, Victoria, and Western Australia, whose Governors would correspond with the Colonial Office as before, but he had "general authority to superintend the initiation and foster the completion of such measures as those communities may deem calculated to promote their common welfare and prosperity." In case of necessity he would repair to another colony, assume, and retain the government during his residence there.[1] The functions of the Lieutenant-Governor would be thereby completely suspended. Remote Western Australia was exempt from such a contingency. No legislation imposing import duties was to take place in New South Wales or Victoria without previous communication between those colonies.

Whatever hopes Earl Grey based upon the creation of a Governor-General were doomed to disappointment. Once only might it have been thought probable that Sir Charles Fitz Roy would feel called upon to supersede a neighbouring Governor, but he stood aloof, and though the office of Governor-General was retained by Fitz Roy's successor, Sir William Denison, it was never put to use, and was subsequently discarded.

When the enactment for separating Port Phillip from New South Wales became known in Melbourne there was great rejoicing. Preparations for an illumination had been made in anticipation. Piles of wood had been collected on the Flagstaff Hill, and when kindled they were to be answered by similar fires on other hills, so that the joy of Victoria might be seen bursting into flame simultaneously[2] throughout the land. The welcome

[1] Despatch, Earl Grey to Sir C. Fitz Roy. Parliamentary Papers, vol. xxxv., p. 40. 1851.

[2] The effect was somewhat marred by some wags who lighted the main bonfire before the news arrived. Of this misadventure Mr. McCombie tells nothing in his 'History of Victoria,' though the numerous wasted fires were a source of general grief at the time.

tidings arrived on the 13th November, 1850. For several days the whole population abandoned itself to festivities. A fancy ball was given; the new bridge (Prince's) over the Yarra-Yarra was opened on the 15th November; games and sports attracted crowds to Emerald Hill; and the local historian fondly declared that "the decorations in the windows expressed the triumph which had been gained over Sydney, and the gratitude that the colonists felt to the Queen and the Home Government for affording them even a tardy release from political oppression." It was proposed to raise a lasting memorial of the event, but the exuberance of the people prevented any agreement as to the form of the memorial. When separation was consummated on the 1st July, 1851, that day was made a holiday, and was observed with diminishing pleasure until it seemed after a quarter of a century to be lightly esteemed. It was remarked as significant in 1851 that Edward Curr, styled the "father of separation," died on the day after Melbourne learned that his object was accomplished.

Earl Grey with a light heart despatched the New Constitution Act to Sir Charles Fitz Roy and other Governors. Premising that "changes in an existing colonial Constitution ought not to be made without very strong reason by the Legislature of the mother country," and that "there was no reason whatever to believe that the community (in New South Wales) were dissatisfied" with their existing Constitution, or that the Legislature had "failed in its duty to its constituents," he announced that the Imperial Parliament had lowered the elective franchise. His assigned reason was that "if the same franchise was to be fixed for the several colonies at the outset (and any other course would have been manifestly inconvenient) it was thought objectionable to establish one recognized as too high." It required some effrontery to write thus when the last returns sent to him from Van Diemen's Land showed a large proportion of convict population, and he was earnestly plotting the increase of transportation of criminals thither. He endeavoured to lighten the blow of dismemberment of the northern portion of New South Wales by explaining that the Government had "no interest in promoting the formation of any such new colony;" that it was requisite to have the power, but it would only be "exercised

on petition from the householders of the territory affected." As to the Civil List he pointed out that only the salaries of the Governor and Judges were determined in it; the departmental provision being merely for each department. But as the faith of the Crown was pledged to existing functionaries he instructed Sir Charles Fitz Roy that he was "not at liberty to give the assent of the Crown to any Act which may be passed, reducing the salaries of those who are now in the public service, or rendering dependent upon annual votes any of the charges now provided for by permanent appropriations." Reduction of salary with regard to future appointments was a matter for the local Legislature to determine. The Earl had the grace to state that the cost of the protection and civilization of the aborigines "ought to be regarded as a charge prior to all others on the revenue derived from the appropriation of the lands of which they were the original inhabitants."

Sir Charles Fitz Roy convened the Legislative Council in March 1851 to pass the measures rendered necessary by the new Constitution. Mr. Ebden, a Port Phillip member, moved the Address in reply to the Governor's speech. It promised "attentive consideration" of the measures to be submitted. Wentworth obtained a Select Committee to prepare a remonstrance against the new Constitution, and brought up the report on the 29th April. On the 1st May a remonstrance was adopted, and entered on the minutes. It assailed the schedules, which by Imperial enactment appropriated the colonial revenues. It assailed the maintenance of the "pernicious Land Sales Act," and of the "exploded fallacies of the Wakefield theory." It denounced the system under which unsuitable immigrants were poured into the colony, and the "bestowal of office by or at the nomination of the Colonial Minister." Under an enactment

"introduced into the Parliament by the Prime Minister himself, with the declared object of conferring upon us enlarged powers of self-government, and treating us at last as an integral portion of the Empire, (the result) is that all material powers exercised for centuries by the House of Commons are still withheld from us; that our loyalty and desire for the maintenance of order and good government are so far distrusted that we are not permitted to vote our own Civil List, lest it might prove inadequate, . . . that our waste lands and our territorial

revenue, of which Her Majesty is but a trustee, instead of being spontaneously surrendered as the equivalent of such Civil List, are still reserved, to the great detriment of all classes of Her Majesty's subjects, in order to swell the patronage and power of the Ministers of the Crown; that, whilst in defiance of the Declaratory Act (18 Geo. III. cap. 12, sec. 1 [1]), which has hitherto been considered the Magna Charta of the representative rights of all the British plantations, a large amount of our public revenue is thus levied and appropriated by the authority of Parliament, we have not even the consolation of seeing that portion of it, which is applied to the payment of the salaries of our public officers, distributed as it ought to be among the settled inhabitants; and that as a fit climax to this system of misrule we are not allowed to exercise the most ordinary legislation which is not subject to the veto of the Colonial Minister."

Thus circumstanced, on the eve of their dissolution they declared and remonstrated against their grievances, bequeathed their redress to their successors, and solemnly protested:

"1st. That the Imperial Parliament has not, nor of right ought to have, any power to tax the people of this colony, or to appropriate any of the monies levied by authority of the Colonial Legislature; that this power can only be lawfully exercised by the Colonial Legislature, and that the Imperial Parliament has solemnly disclaimed this power by the Act 18 Geo. III. cap. 12, sec. 1, which remains unrepealed.

"2nd. That the revenue arising from the public lands, derived as it is mainly from the value imparted to them by the labour and capital of the people of this colony, is as much their property as the ordinary revenue, and ought therefore to be subject to the like control and appropriation.

"3rd. That the Customs and all other departments should be subject to the direct supervision and control of the Colonial Legislature, which should have the appropriation of the gross revenues of the colony from whatever source arising; and, as a necessary incident to this authority, the regulation of the salaries of all colonial officers.

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[1] With a contempt for the letter and a large comprehension of the spirit of the law of 1778, Wentworth scorned to notice that it referred in terms to America and the West Indies. "From and after the passing of this Act the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of His Majesty's colonies, provinces, and plantations in North America or the West Indies, except only such duties as it may be necessary to impose for the regulation of commerce. . ."

"4th. That offices of trust and emolument should be conferred only on the settled inhabitants, the office of Governor alone excepted; that this officer should be appointed and paid by the Crown; and that the whole patronage of the colony should be vested in him and the Executive Council, unfettered by instructions from the Minister for the Colonies.

"5th. That plenary powers of legislation should be conferred upon and exercised by the Colonial Legislature for the time being; and that no Bills should be reserved for the signification of Her Majesty's pleasure unless they affect the prerogatives of the Crown or the general interests of the Empire.

"Solemnly protesting against these wrongs, and declaring and insisting on these our undoubted rights, we leave the redress of the one and the assertion of the other to the people whom we represent and the Legislature which shall follow us."

By eighteen votes against eight the remonstrance was adopted. Representatives composed the bulk of the majority. Nominees formed the minority. With Wentworth were James and William Macarthur, the sons of John Macarthur, "the father of the colony," Mr. James Martin (its future Chief Justice), and representatives from every settled district under the Royal standard in New South Wales. Captain P. P. King, R.N., the son of Governor King, was also in the majority, though a nominee. Meanwhile Electoral Bills were passed for New South Wales and for Victoria. For New South Wales there were provided thirty-six representatives and eighteen nominees. Sydney had four members, other towns had seven. Seventeen members were allotted to the counties (twenty-one in number) and eight were given to the sixteen pastoral districts to which the franchise had been extended. To Victoria thirty members were allotted; twenty elected, and ten nominees. Melbourne had three, Geelong two, other towns three; the settled districts of Bourke and Grant had three; intermediate districts had five; and the pastoral districts had four representatives.

To the distribution of members Dr. Lang showed uncompromising opposition, and he was aided by his colleague, Mr. Lamb, and by Mr. William Westgarth of Port Phillip. Dr. Lang was ever followed by a section of Scotch politicians, who supported what he called Liberal notions without reflecting that when

carried to completion they would neutralize the results of that honourable industry for which Scotchmen are deservedly famous. Dr. Lang, from antipathy to all who would not aid his schemes, from a lurking hatred of monarchy, an inherent craving for destruction of what others revered, and a keen perception that he could strengthen his position by pandering to the lower class of voters in Sydney, assailed, with his usual coarseness and power, the manner in which the Bill debarred the urban population from exercising by force of numbers an absolute control over the scattered dwellers in rural districts. Mr. Westgarth, amiable himself, shrunk from no consequence in following his unamiable leader. "Let those who dislike or fear democracy go away," he cried.

The debate it is needless to detail, but Deas Thomson's defence of his Bill may be alluded to. He averred that he had sought "fairly to represent every national interest, and not to give one a preponderance prejudicial to any other. My own opinion is that all these interests are mutually dependent on and beneficial to each other, and that to give to each its fair share of representation must be to advantage all." To Westgarth he retorted: "Let those who refuse to be governed by the constitutional principles of England go away from this colony which England has founded and peopled." To Lang he said:

"If that immortality (which Lang had said Thomson had missed) is only to be achieved by pandering to those democratic principles which the honourable and reverend member professes—if it is to be gained only by the surrender of those constitutional principles which it has always been my pride to uphold, I regret not the loss of such an immortality. I could only have obtained it by a gross dereliction of my duty to my Queen—to the Government I serve—and to the public at large. Throughout the long career I have pursued in the public service of this colony it has ever been my study to promote the public welfare; to deal with every public measure without favour or affection to any man; to conduct myself alike to all of whatever party, creed, or denomination; to do justice to the poor man as well as to the rich. And while I believe that none will deny, and many will attest, that these have been the principles of my past official life, I boldly assert that these principles, and these only, have actuated me in the preparation of this measure."

With the elaborate calculations by which Deas Thomson convinced the House and the thinking part of the community that what he had done was good for the country these pages need not deal. The Governor forwarded to England his Minister's speeches as published by request of the Governor and of

"respectable and influential persons. The only merit I can claim is the having assisted in determining and concurred in the principle that property and population combined, and not population alone, was the basis of representation best adapted to the social state of this community; and that the representation of the rural districts should be kept as separate as practicable from that of the towns. To Mr. Thomson belongs the entire credit of having framed the Bill, and worked out its details, as well as having so ably advocated them when before the Council."

In proportion as Sir Charles Fitz Roy's words declared the truth that in Deas Thomson the colony had possessed unconsciously a wise and honourable statesman; in the same proportion did the self-seeking and envious fume against that statesman's apparently successful policy. Earl Grey's Bill had, by reducing the franchise to £10, inspired Dr. Lang and his followers with high hopes of domination. The adjustment of the representation on principles which forbade the pillage of the educated and industrious by the misguided votes of the idle, stirred Dr. Lang to more than common efforts. As usual he had a newspaper at command. The "firm of Thomson and Co., or the conspirators," were attacked as atrocious, malicious, revengeful. The three principals in the "foul conspiracy" were Thomson, Latrobe,[1] and Wentworth. If the public should be of opinion that the Governor should be classed with them, Lang would not object. The thinking portion of the public rightly estimated the moving causes of Dr. Lang's diatribes. Beside the sweetness of exercising power, and robbing the honest and industrious, which whets the appetite of anarchists everywhere, there were personal grievances which may be briefly told. It is almost unnecessary to say that from the narrative published by Dr. Lang it would be impossible to

[1] Mr. Latrobe, the Superintendent of Port Phillip, had visited Sydney in order to study the arcana of official departments there in anticipation of the creation of the new colony of Victoria, of which he was to become Governor. Even Lang, if he had known the amiable and honourable character of the man, would perhaps have shrunk from the grotesque absurdity of imputing vile or acrimonious intentions to the upright Latrobe.

divine the truth. Being in England in 1847, he strove with accustomed energy to procure funds and to promote emigration. He wished to send cotton-growers to Moreton Bay, and induced certain Glasgow manufacturers and the Chamber of Commerce at Manchester to support his views. In September, 1848, he applied to Earl Grey to cause the special regulations which sanctioned special advantages with regard to immigrant foreigners skilled in vine-culture to be applied on behalf of immigrants selected by himself for agricultural settlement, and principally for cotton growing. He did not ask for money. That he took care to obtain from the emigrants or their friends. He wanted land-settlement orders. No law, no regulation provided for his wants, but he thought it would be injurious "if any difficulty should be thrown in the way merely because there has been a slight but unavoidable deviation from the usual course of procedure in the matter of emigration." One hundred families were to be sent out. The Government Commissioners were to manage the emigration. The emigrants were to receive about 80 acres for each family. Dr. Lang was to manage the money they might pay in England. The experiment was "merely of a preliminary character." Something "much more extensive" was to follow. Mr. Hawes (Under-Secretary) informed Dr. Lang (November 1847), that though the proposal did "not fall directly within the objects for which means of sending out emigrants" to New South Wales had lately been raised, yet Earl Grey, sensible of the importance of the project, would endeavour to aid it "if an association should be actually formed for trying the cultivation of cotton, and should agree to purchase lands belonging to the Crown on such terms as would be compatible with the existing law." But he could not "begin by promising to send out the people, leaving it to be afterwards settled whether the body upon whom they were to be dependent would be organized, and would require the land upon which they were to be employed." In a subsequent despatch (December 1847), Lang was informed that the arrangements he proposed were "altogether inadmissible." On further application he was told, April 1848, that Lord Grey could "not depart from the decision intimated in December." If, however, enterprising persons should desire to proceed to Moreton Bay to

acquire land they could by depositing money with the Emigration Commissioners ensure the transit of an equivalent number of suitable labourers. These facilities were not suitable for Dr. Lang. It had ever been his habit, whether as trustee for church or school, to handle other men's money, not for the purpose of hoarding it, but as accessory to the maintenance of his position. He took money in defiance of Earl Grey's refusal to accept his proposals, and in September 1848 wrote that he had sent out emigrants. He asked the Earl to recommend the Government in Sydney "to allow bounty" on them. Mr. Hawes (October 1848) replied[1]—

"You have already been acquainted with the general rules which have been laid down as to the conditions on which alone any aid from public funds can be granted towards the conveyance of emigrants to Australia, and of the reasons upon which those rules have been adopted. You have not, however, thought fit to conform to them, and therefore Lord Grey considers it necessary, for the protection of the public interest, to decline to order payment for any persons who have been sent out, not only without the previous sanction of the Government, but in disregard of those conditions to which I must again refer you."

Lang nursed his wrath for a time. An open quarrel with the Colonial Office might have marred the arrangements under which he was obtaining money from emigrants. The Emigration Commissioners had, by waiving ordinary forms, given him facilities for the departure of his selected emigrants, although they had been troubled by his backwardness in depositing the required money in advance. It was not until June 1849 that they "refused to sanction any further irregularities, or to pass any emigrants for whom the deposit had not been previously made." About the same period Mr. Bazley (Chairman of the Manchester Chamber of Commerce) presented a memorial from that body urging that a bonus of £18 might be paid to Dr. Lang for each emigrant sent out by him to Moreton Bay, to cultivate cotton. Mr. Hawes replied, that although such a sum was allowed for each skilled vigneron, Dr. Lang's emigrants knew nothing about the culture of cotton, and that, as the colony could obtain immigrants at a cost of from £13 to £14 a head through

[1] New South Wales Legislative Council Proceedings, vol. i. p. 454. 1850.

the Commissioners, to comply with Dr. Lang's request would have the effect "of diminishing by nearly one-third the number of emigrants, and securing a profit of nearly 50 per cent. to Dr. Lang and the other persons who might engage in the conduct of emigration." There was no longer occasion for Sir Pertinax to be McSycophant. Lang appeared in his true colours. In November 1849 he published a letter under circumstances thus described by Earl Grey, to whom the letter was addressed :

"In the course of three years during which Dr. Lang informs me he has been in England, he never once addressed a complaint to me, either as to the discourtesy which he alleges that he met with, or on any other of the topics upon which he now animadverts. It was only when he had already embarked in the ship which was to convey him from this country, and it was no longer possible that he could be called upon to make good his statement, and after it was discovered that his conduct in certain transactions might become the subject of a prosecution at law, that he addressed, not in reality to me, but to the public, which is unacquainted with the circumstances, a letter calculated to create an entirely erroneous impression, &c."

Expressing the real fact, Earl Grey said the task was ungrateful, and that he regretted that "a man who once held the honourable post of head of the Scotch Church in the colony should have issued so many unfounded and intemperate assertions because he has not been allowed to carry on schemes of emigration from which he would have derived great individual gain at the cost of the public."

The Manchester Chamber of Commerce lost no time in telling Earl Grey that they utterly condemned the "tone and sentiments" of Lang's "intemperate letter." Lang meanwhile having returned to Sydney, and been elected member for Sydney in 1850,[1] with customary vigour and absence of shame, asked the Legislative Council to appoint a Select Committee to investigate

[1] There was a difficulty about his property qualification. Part of it was based on the Australian College Buildings, with regard to which his misconduct has been told. He attempted to escape the difficulty by appending a note to the effect that two of the four College Buildings were recognized as "in equity" his personal property, but that he hoped "eventually through the revival of the College to reconvey the same to the Institution for the purposes for which they were originally intended" (Legislative Council Proceedings, New South Wales). 1850.

Earl Grey's charges against him. An amendment to appoint such a Committee before which Lang himself might appear "personally or by counsel" was debated and withdrawn, and Lang's motion was rejected. But though unwilling to make Lang a juror on his own delinquencies, the Council thought it becoming to do something. Mr. T. A. Murray moved that the House having heard Lang's explanation was of opinion that he had failed to exculpate himself. Wentworth obtained an adjournment of the debate in order that "all official documents connected with a land order for £850" might be put before the Council. On their production Lang was heard,[1] and a resolution was passed to enable him to remain in his place during the debate (on the 20th August, 1850). On the following day he was heard again. The final resolutions (on the motion of Wentworth) condemned Lang's conduct as fraudulent and discreditable.[2] Lang had few supporters in the House, but he afterwards asserted that the decision was stolen during the absence of his friends. But the names of those who were present were too highly respected for such aspersions to be credited. The Treasurer, C. D. Riddell; Deas Thomson; Plunkett the Attorney-General; Henry Watson Parker; Thomas Icely; Wentworth; Donaldson; Murray; William

[1] He spoke for two hours and a half.

[2] It will be well to record the resolutions. "That this House having been invited by the Rev. Dr. Lang to ascertain whether there are any, and if any, what foundations there are, for the charges recently preferred against him by the Right Honourable the Secretary of State for the Colonies in his despatches... and having considered these despatches and the circumstances generally connected with them, and having heard the Rev. Dr. Lang in explanation, is of opinion that there are foundations for such charges, and particularly—1. That the Rev. Dr. Lang having been warned by competent authority that any emigrants sent out by him contrary to the Regulations in force for the conduct of emigration to these colonies, would not be entitled to any remissions in the purchase of land,—induced many persons, nevertheless, to pay him for their passages at rates above the current price, and to emigrate under the impression that they would be so entitled to land on their arrival. 2. That the beneficial interest in the land order, of two parts, dated 16th June, 1849, for £850—which sum the Rev. Dr. Lang in his letter to Mr. Pettigrew, his agent, directing the allotment of this land, distinctly admits that he received from the allottees,—was not in the Rev. Dr. Lang but in such allottees; that he was merely their trustee: and that his subsequent pledging of the duplicate of the said order was a fraud upon his *cestui que* trusts, and highly discreditable."

Macarthur; C. H. Ebden (from Port Phillip); and Mercer his colleague, afforded a combination which defied belief in any ill motives on their part. Yet Lang had friends, and though he affected to retire from the Council, it was in order to be sent back by a popular wave stirred by his own breath. Within a week a meeting was held to condole with him and denounce the "tortuous and unconstitutional" proceeding of the Council. There had been thirteen members present when he was condemned. He publicly called them "the Deil's Dozen,"[1] and heaped upon them every epithet of his copious vituperation. At that early period he saw that by fostering enmity between the urban and rural populations he might gratify his passion for revenge, and his love of popularity. In denouncing Wentworth as a squatter, and Deas Thomson as a conspirator who had vested power in the pastoral districts, he proclaimed himself the friend of the oppressed artisans who had been robbed of their rights. He was confident that his supporters would not look back and condemn him for having, when elected for the Port Phillip district, striven to confer the franchise upon all licensees on Crown lands, or for having flattered and fawned upon Wentworth, when without his aid Lang might have been, in 1843, driven from the Council on failing to extract money from the Treasury in order to relieve himself from personal distress. Henceforward, Wentworth was on all occasions denounced by Lang as infamous, and thus it was that when the electoral measures incidental to the separation of Victoria were passed in 1851 in Sydney, Dr. Lang vented his spleen upon Deas Thomson and Wentworth, who had sanctioned the resolution condemning

[1] It was while rioting in the support he received from Mr. Wilshire, Mr. Henry Parkes (who ought to have known better), and others at this time that Dr. Lang was convicted of libelling Mr. Icely, who instructed his solicitor to take Lang's newspaper and prosecute anything plainly punishable. Lang published libels about Icely, referring to the year 1824. Proof of their falsehood was nevertheless forthcoming, and to escape punishment Lang published his regret that his statements were "at variance with the facts." Nevertheless Lang was sentenced to pay a fine of £100, and was imprisoned for four months. He employed his confined energy in preparing a third edition of his 'History,' which he published in England in 1852, whither he went on finding it dangerous to declare that the College houses were his own property at the time of his re-election to the Legislative Council in 1851.

his fraudulent proceedings. His arguments may be illustrated by one of them. In 1870, he published[1] a "brief sketch" of his parliamentary life and times. He then stated that Wentworth had only "assumed the character of a patriot to gratify his own personal pique" against Governor Gipps, who in 1840 had denounced Wentworth's New Zealand land claims "as utterly unparalleled in the annals of jobbery." Yet Wentworth's speech on behalf of his claims was as public as that of Gipps in reply. The whole transaction was published at the time, and it has been seen that, afterwards, while there seemed something to be gained Lang had been Wentworth's obsequious parasite.

The elections which were held in New South Wales in 1851 may be mentioned here. The reduction of the franchise by Earl Grey produced fruit. In 1848 not all the labours of those who were aggrieved against Wentworth on the subject of transportation, not all the mercantile influence of Mr. Lamb, not the eloquence of Lowe, the efforts of Parkes, nor the intrigues of the democratic hangers-on of Lang (who was absent), could keep Wentworth from the head of the poll in Sydney. In 1851 three members were to be elected. Lang[2] was at the head of the poll; Lamb second, Wentworth third. The former idol of the people had been dethroned. They were not the same people in one sense, for the suffrage had been degraded by Earl Grey. But Wentworth had polled fewer votes in 1851 than had been recorded for him in 1848. Lang revelled in his pride of place, but, aping humility, attributed his success partly to the triumph of those liberal principles which were "the hope of long-oppressed and suffering humanity." But he declared from the hustings that if more than a thousand Scotchmen had not migrated to the recently-found gold-fields at Bathurst, Wentworth would have been rejected altogether. Even as it was the "towering talent" and "distinguished intellectual qualities" of Wentworth made the "spectacle of coming in third best" melancholy.

[1] J. L. Sheriff. Sydney: 1870.

[2] The numbers were—Lang, 1191; Lamb, 1015; Wentworth, 991; A. Longmore, 900; Charles Cowper, 870. In 1848 they had been 1168 for Wentworth; 1012 for Lowe; 950 for Lamb; and 874 for Bland. Earl Grey's reduction of the franchise had done much. After 1851 the influx of gold-seekers was to do more.

Lang professed loyalty to Her Majesty, but averred that it was "the right of any colony as soon as it could stand on its own legs to entire freedom and independence." He was vociferously cheered. His vehement gesticulations gave piquancy to his coarse language and broad accent. He recognized the tribute paid to him. As the day was hot he pleaded for and obtained permission to speak with his hat on. He had nothing to dread from the people, but "could not stand (he said) the fervour of the Australian sun." Lamb, the creature of the well-worked machinery which had elected Lang, was favourably received. There had been mutterings in the crowd that Wentworth would be too proud to present himself before them; that they would not have the pleasure of goading him with their taunts. But the old man stood before them when it was his turn to thank his supporters. Lang's well-organized phalanx yelled in concert at the orator who had so often wielded the fierce will of the citizens of Sydney, and might again, if heard, influence them in his favour. For three-quarters of an hour Wentworth stood with uncovered head enduring the ardent sun and the pitiless howling mob. He spoke as though he heard them not. The reporters could hear him, and were busy. Enraged at his contempt of inarticulate interruption the prompters of disorder sought to irritate him. In one part of the crowd stood two men, one a Scotchman who had yelled, another an Australian-born workman, standing with bared arms. The latter entreated those around him at least to allow Wentworth to be heard. The jubilant Scotchman at last raised a cry in the crowd—"Resign, Billy, you're last on the poll—resign." Caught from mouth to mouth the cry ran through the assembled thousands, and seemed to demand an answer. Drawing himself up, as Henry V. called on his soldiers to do at Harfleur, the old man retorted, "Resign! I will not resign. You have placed me here with my *worthy* colleagues" (the savage irony he threw into the word 'worthy,' as he designated Lang and Lamb scornfully with a wave of his hand, seemed to electrify the crowd), "men very unlike myself, and who unless they should change their opinions will continue to be unlike me—but you *have* placed me here, and by God's blessing I will remain here to counteract their pernicious tendencies." The storm was stilled. Struck by compunctious visitings

the crowd clamoured no more, and for three-quarters of an hour not a word was lost. When, at the close, the speaker touched upon his increasing years, and the improbability of his again seeking their suffrages, the workman who had implored for a hearing for his countryman, with many others, was in tears.

Thus were electoral wars waged in New South Wales under Earl Grey's imposed suffrage. There was still a property qualification required for a member, and Lang—advised that if he should declare himself the owner of the buildings of which he had so equivocally possessed himself at the expense of his Church, they might be seized by creditors—feared to take his seat. To the leisure afforded by his imprisonment for libel in 1850 he added that of a voyage to England, and in a third edition of his 'History' declared that though constituents offered to relieve him from liability, and enable him to take his seat, he "respectfully declined the assistance thus offered," because it did not become "an advocate for popular freedom and the rights of man to be under pecuniary obligations to his constituents." It will be understood that in that 'History' there is no mention of the pecuniary assistance he received from Wentworth, Bland, and others to enable him to retain his seat in 1843.[1] At the remaining elections in 1851 many former members were again returned. The familiar name of Macarthur re-appears with Macleay, Martin, Cowper, Murray, Nichols, and others. Sir Charles Fitz Roy added to the official nine—(which included

[1] A specimen of Dr. Lang's style may be given. Writing to the 'Empire' newspaper before going to England, he expected some Parliamentary action in England, "in consequence of discovery of gold in this territory," . . . and "we have nothing to expect from anything of this kind but the grossest injustice, usurpation, and oppression." . . . "if it is attempted to continue to perpetrate the present Constitution . . . it will be got rid of, and in all likelihood with violence, within five years from the present time, and a system of government in which Great Britain will have nothing to say, be established in its stead." Being a man of peace he deprecated "the necessity of such a catastrophe" . . . but (he would not tolerate) the existing Constitution. "I think it is both the interest and the duty of the inhabitants of this colony to ignore the present Council in any agitation for Constitutional Reform. In the Electoral Act under which the present Council has been constituted the people of the colony have been regularly swindled by the 'Artful Dodger' the Colonial Secretary and his honourable and learned pal who has so long misrepresented the metropolis." The letter was reprinted in the 'Argus' on 1st January, 1852, in Melbourne.

Deas Thomson, Plunkett, W. M. Manning (the Solicitor-General), F. L. S. Merewether (Postmaster-General), and W. Lithgow (the Auditor-General)—nine unofficial nominees, amongst whom were Alexander Berry, who had seen Governor Bligh's imperious folly in 1808; Edward Broadhurst, one of the ablest barristers in the colony; H. Watson Parker, afterwards to be a Premier; Alfred Denison, brother of the Governor in Van Diemen's Land; Mr. Icely, a former nominee; Mr. Longmore, a defeated candidate at the Sydney election; Dr. Dobie; Mr. George Allen, and Mr. T. Hughes. The session was opened on the 16th October. The Governor's speech adverted to the important change produced by the recent discovery of gold; to a despatch intimating that Her Majesty would at an early date revoke the existing Order in Council with regard to transportation so far as it related to New South Wales, and to various measures of general legislation. The Council responded cordially to his desire for harmony. They foresaw important results from the discovery of gold, and while hoping that they might ultimately be beneficial, felt that the immediate effect would be to strain the resources of the colony in enforcing obedience to law, and prosecuting ordinary industries. Wentworth had from the first pronounced that the discovery had precipitated the colony into a nation, and that no friend of its progress could tolerate the continuance of transportation of convicts to its shores. But he did not slacken his efforts to secure for the Colonial Legislature the control which was asked for, if not demanded, in the remonstrance of the Council adopted in May 1851. Setting out that Remonstrance in full the Council declared that they, the succeeding Council, re-affirmed it:—"We owe it to ourselves and our constituents to denounce to your Majesty, as the chief grievance to which the people of this colony are subjected, the systematic and mischievous interference which is exercised by the Colonial Minister even in matters of purely local government."

They were "most anxious to strengthen and perpetuate the connection" happily subsisting with their fatherland, but it would "be impossible to maintain much longer the authority of a local executive" compelled to refer "all measures of importance" . . "for the decision of an inexperienced, remote, and irresponsible department." That Her Majesty's advisers might

"have no excuse for the continuance of these abuses" . . we unhesitatingly declare that we are prepared,

"upon the surrender to the Colonial Legislature of the entire management of all our revenues, territorial as well as general, in which we include mines of every description, and upon the establishment of a Constitution similar in its outline to that of Canada, to assume and provide for the whole cost of our internal government, whether civil or military, the salary of the Governor-General alone excepted, and to grant to your Majesty an adequate Civil List . . ."

Deas Thomson called for a division, but twenty-one votes carried the proposed petition to the Queen. Seven officials found one non-official nominee voting with them. Sir Charles Fitz Roy told Earl Grey that the petition was supported by the "general and deliberate opinion of the most loyal, respectable, and influential members of the community," and suggested the desirability of acceding to it.

The Earl, in January 1852, replied at great length to the Remonstrance of May 1851. He impeached the claim of the colonists to control the waste lands of the Crown. "The 4000 inhabitants of Western Australia" might with equal justice put it forward. After arguing firmly but courteously against other claims of the Council, he trusted "that, however this explanation may be received by those who as members of that body adopted the declaration, their constituents will be more disposed to weigh the considerations here advanced . . ." Under what theory of Government the remote Minister could thus affect to look beyond the local Parliament for public opinion in the colony the Earl did not deign to explain.[1] Fortunately for the colony, and perhaps for himself, he soon disappeared from the scene.

By retributive justice a militia question became the weapon which drove Lord J. Russell from power, as he had by trickery driven Sir Robert Peel, in 1846, on a Protection of Life Bill. But the great Commoner was no longer at hand. He had died in 1850, having proved by patriotic conduct in the House how

[1] In his work on the 'Colonial Policy of Lord J. Russell's Administration' (1853), Earl Grey averred that the Council in its Remonstrance had "fallen into errors both of reasoning and of fact so obvious" that it must have been "drawn up under the influence of excited feelings."

far he was above the selfish aims of his opponents and betrayers. Lord J. Russell fell by the hand of Lord Palmerston, who obtained a majority of eleven votes in a House of only 261 members, and rather than tempt a second blow—unable to rely any longer on the Irish brigade in the House, or to contend with the resilient Palmerston whom he had dismissed,—Lord Russell resigned, and Lord Derby reigned in his stead for a brief period. Brief as it was it saw the solution of the questions raised in Wentworth's Remonstrance. The new Colonial Minister was Sir John Pakington. Copies of the Remonstrance were sent to Lord Naas (the Secretary for Ireland), and another member of the House of Commons. Lord Naas undertook a duty with which some of his colleagues appeared not to sympathize. He presented the Remonstrance on the 17th June, 1852.

On Mr. Gladstone's suggestion, a document of so "much historical importance" was read. Mr. Disraeli, the Chancellor of the Exchequer, objected to the undutiful expressions in the petition which called Her Majesty "only the trustee of her own dominions." Sir James Graham saw no impropriety in the phrases of the petition. The Speaker thought the question of receiving the petition might be postponed. Mr. Hume considered that a postponement would be insulting. Mr. Walpole thought it proper to consider the phraseology. Mr. Gladstone asserted that the Queen might fairly be described as the trustee of the waste lands of the colony, and in that sense only had the term been used. Mr. Ellice concurred, and declared that to "throw any doubt upon the reception of this petition would be to put an affront of the strongest kind upon the colony. If Mr. Disraeli should persevere, Mr. Ellice for one would be prepared to come to a vote on the question." Mr. Disraeli, without accepting the theory of Mr. Ellice, did not press his objection. Lord Naas explained that he had read the petition carefully, and had seen nothing disrespectful to Her Majesty in it. It was received. Sir John Pakington at a later date undertook to consider it carefully.

In the succeeding session, Sir William Molesworth called attention to the "solemn protest and declaration of the colony," and Sir John Pakington announced (10th Dec. 1852), that with his colleagues he had considered "the very important

statements it contained," and a decision had been arrived at. It was wafted to the colonies in a despatch dated 15th December, 1852, and became the charter, under which for weal or woe they were empowered to mould their destinies. Copies were sent to Victoria, and to South Australia, in order that there as well as in New South Wales the inhabitants might avail themselves of Wentworth's labours. Very different was the reply from that which Earl Grey had sent to the first Remonstrance in the same year. The gravity of the question was candidly admitted. The unparalleled condition of affairs arising from the discovery of gold, the "signal evidence of the fitness of the New South Wales people to regulate their own affairs," conduced to make the Government pay serious attention to the Remonstrance. The control of the customs, and the distinction between local and Imperial subjects of legislation were lightly touched upon as matters which would be fairly considered when represented specifically. On the appropriation of monies levied by authority of the Colonial Legislature, and the administration of waste lands, the Government were "ready to accede to the wishes of the Council and of the colony, in a spirit of entire confidence." The gold revenue had, by a despatch dated June 1852, been placed at the disposal of the Legislatures in New South Wales, and in Victoria. The whole of the Crown lands' revenues would be surrendered by the Crown, "after those changes have been effected in the Constitution which are adverted to in the petition." . .

"On the receipt by Her Majesty's advisers of such a constitutional enactment . . . with a Civil List annexed to it in accordance with what I understand to be the intention of the Legislative Council, they undertake forthwith to propose to Parliament such measures as will be necessary to carry into effect the entire arrangement, namely, the repeal of the Land Sales Acts, and the requisite alterations in the Constitutional Acts, and the schedules annexed to them. In order to avoid misunderstanding, I wish to state that such a Civil List should provide for the maintenance of the salaries of the principal officers of the Government at their present rate until altered by Act. The Governor, Judges, . . . are clearly within this description, but I must leave it to yourself and the Legislature to decide what other functionaries have claims to a similar position. The sums appropriated to pensions and to public worship should also be maintained."

The despatch was made the vehicle for gratifying assurance on another vital question. New South Wales and Victoria had protested against transportation with equal warmth, and declared "no doubt with truth that, with the temptation of gold-fields within their limits," it would be impossible to preserve themselves from contamination. Van Diemen's Land entreated that she might "no longer be made the receptacle of the criminal population of the mother country." . .

"Her Majesty's Government are unable to resist the force and justice of these remonstrances; and in pursuance of the announcement made by the Queen in Her Majesty's gracious speech from the throne at the commencement of the present session of Parliament, they propose altogether to discontinue transportation to Van Diemen's Land, at as early a period as shall be consistent with the completion of the arrangements which are indispensable for the bringing to a close a system so long in operation."

Wentworth's Remonstrances had contemplated changes, in the constitution of the local Legislature, assimilating it to that of Canada. Sir John Pakington concurred in the propriety of such a course, but thought it needless to enlarge "upon the advantages of a double chamber for the safe and satisfactory government of an important community under representative institutions." Sir J. Pakington finally declared:

"It is to me a source of very great satisfaction to be the agent for conveying to you the consent of Her Majesty's Government to measures which they trust will not only tend to promote the welfare and prosperity of the great colony over which you (Sir C. Fitz Roy) preside, but also to cement and perpetuate the ties of kindred affection and mutual confidence which connect its people with that of the United Kingdom."

If it be permitted to hazard a surmise upon the subject, one might infer that in the bold lines and generous instincts of the despatch, the hand and heart of Lord Derby, the Prime Minister, may be traced. He had himself been Colonial Secretary, and would naturally be consulted on a momentous subject. It is clear that the treatment of the Remonstrance in the despatch differed widely from the reception given to it by Messrs. Disraeli and Walpole when Lord Naas presented it to the House.

While these events were in progress, and the Constitution of 1850 which effected the separation of Victoria was working, Mr. Latrobe modestly assumed office as Lieutenant-Governor in the province in which he had so long officiated as Superintendent. His enemies sneered at his modesty as a sign of incapacity.

The issue of writs, 1st July, 1851, for election of members of Council for Victoria was the legal symbol of separation from New South Wales, and the day was set apart as a day of rejoicing for ever by the 77,000 fledglings of 1851. On the 15th July Mr. Latrobe took the oaths of office, and appointed his principal officers, who were members *ex officio* of his Executive Council. Captain W. Lonsdale became Colonial Secretary; Mr. W. F. Stawell, Attorney-General; Mr. Mackenzie, Treasurer; Mr. Cassells, Collector of Customs. Mr. C. H. Ebden became Auditor-General, but unfortunately was not a member of the Executive Council; and his sagacity was to a great extent lost at a critical period. The Secretary was upright and amiable, and had a sense of duty which would, when aroused, prompt him to make any sacrifice; but he was unlearned in politics, and simple enough to expect others to be as honest as himself. The Attorney was able, energetic, and both in mind and body strong for work. He was not more trained to politics than the Secretary; and, unlike that officer, could meet by guile the arts of an opponent. But he wished well to the country, and devoted to it an energy unsurpassed in the community. Confident in that energy, he seemed not to encourage the exertions of others unless they were guided by himself. The Treasurer was honest but incapable. The capacity of the Collector of Customs was limited to the department in which he had risen by plodding. It was evident that the strong will of the Attorney-General would be supreme, and that the facile Governor would be powerless to resist his most capable adviser. Events imposed a difficult task on the newly-created Government. The discovery of gold and the proof of the Californian methods of obtaining it had been made in New South Wales in May 1851. Subsequently the same methods were successfully applied in Victoria; and before the Legislative Council was summoned for the despatch of business (11th November, 1851) confusion in all ordinary industries was dreaded. Farm, shop, and street

poured adventurers to the gold-fields. The convulsion existing and the prostration apprehended, would tax the powers of a competent Administration inured to its task. It remained to be seen whether it was competent, and it was without experience. Among the elected members there was believed to be much ability. Mr. John O'Shanassy had been prominent as a member of the Melbourne Corporation, and was a diligent student of public affairs. Mr. Fawkner (who had followed Batman to Port Phillip in 1835) had also been busy in the City Council. Eager in the exposure of abuses as a City Councillor and a citizen, he was looked upon as likely to use his legislative privileges with effect. He affected the rough simplicity of William Cobbett, but he was without Cobbett's ability, and having no constructive power or breadth of view his career became that of a useful carper at abuses whose influence was qualified by ignorance and intemperance of language. Yet he was in some degree a terror to evil-doers, and was sober and just in his personal dealings.

The effect of the discovery of gold, which communicated a shock to the system of each neighbouring colony, deserves especial treatment; and as the administration of Crown lands in New South Wales and Victoria was intimately bound up with the consequences of the irruption of hundreds of thousands of gold-seekers it will be convenient to postpone that subject also. Matters affecting the Australian colonies at large can more comprehensively be put before the reader in relation to their general effects than piecemeal in the separate notices of each colony. The questions of transportation and of the discovery of gold are of this order.

The constitutional position of South Australia may take precedence of that in Van Diemen's Land and Western Australia. It will be remembered that although legal machinery was provided by Lord Stanley (5 and 6 Vict. cap. 61), in 1842, for creating an Assembly and a Council, it was never put to use, and the Governor of the colony continued to administer affairs with a Legislative Council wholly nominated by the Crown. The attention attracted to the subject in England, when it was thought necessary to meet the momentous questions raised by Wentworth in Sydney, embraced South Australia. Earl Grey's

despatch to Sir C. Fitz Roy (31st July, 1847), contemplated the inclusion of the colony in his scheme for establishing in each province two Houses, one nominated and one elected. After the opposition excited in Sydney by that proposal the Privy Council report of April 1849, recommending the creation in each colony of "a single House composed of nominees of the Crown and representatives of the people jointly," stirred the South Australian mind. Mr. John Morphett, a member of Sir Henry Young's Council, stepped forward to give shape to public feeling. The Governor aided him by directing (although the Council was not in session) the publication of resolutions to be submitted by Mr. Morphett in the future. Transmitting a copy to Earl Grey, Sir H. Young described the scheme as "a proposed transference to South Australia of those political and social institutions of Great Britain by which the useful grandeur and glory of the empire have been gradually and progressively enlarged, and strengthened and preserved."

Mr. Morphett proposed an Upper House nominated by the Crown from hereditary members and attached to the soil by landed property. The second chamber was to be elected by the people. Mr. Morphett did not specify the qualification of electors. He contemplated party government, for he provided that the Executive Council should retire upon a vote of want of confidence. The Governor was to be removable on an address to the Crown from both Houses. All "subjects of local concern or interest" were to be within the scope of the local Legislature, which was to have "absolute control over the waste lands of the province," and the revenues arising therefrom, "with the restriction that at least one half of the funds (from land sales) should be devoted to immigration from the mother country." The Federal General Assembly proposed by the Privy Council found no favour with Mr. Morphett. South Australia would "have no voice," because her population was relatively small.

On the 15th December, 1849, the Legislative Council passed Morphett's resolutions with alterations. They discarded the hereditary principle in favour of an Upper House nominated for life. Only Mr. Hagen sympathized with Mr. Morphett. The removal of the Governor on the request of both Chambers was not approved of. The Council proposed that the Colonial

Secretary, the Advocate-General, the Colonial Treasurer, the Collector of Customs, the Surveyor-General, and the Commissioner of Police,[1] should be *ex officio* members of the Lower House unless placed in the Upper. They reprobated the Elective General (or Federal) Assembly as "greatly injurious" to the lesser colonies. People out of doors took up the question for themselves. Messrs. J. H. Fisher, G. S. Kingston, S. Davenport, G. Elder, G. A. Anstey, A. H. Davis, F. S. Dutton, G. M. Waterhouse, J. B. Montefiore, W. Peacock, W. Blyth, and S. Stocks were movers and seconders of resolutions passed with fervour at a public meeting. They thanked Earl Grey for his tentative Bill of 1849; but they condemned the Federal Union as "in a British sense unconstitutional, morally opposed to the social institution of the colony, and endangering our colonial independence." They deprecated life nominees in an Upper House as "an intolerable evil." In reporting to the Secretary of State, Sir Henry Young expressed an opinion that "a judicious and gradual distribution of honorary and hereditary distinctions" would raise the "tone of public sentiment."

The suggestions and counter-suggestions of the South Australians are interesting proofs of the prevailing opinions. The general Act (13 and 14 Vict. cap. 59), settled the Constitution for a time. The colony was empowered by its existing Legislature to establish a Council of any number not exceeding twenty-four, two-thirds of whom were to be elected and one-third nominated by the Crown. The necessary Act was passed in February 1851. The colony was divided into sixteen electoral districts, each of which had one member. Earl Grey conveyed the Queen's sanction, and the new House met on the 20th August, 1851.

Captain Charles Sturt (the explorer), who was Colonial Secretary of the province, and seven others, of whom Mr. Morphett was one, were nominated by the Governor. Amongst the

[1] Sir Henry Young told Earl Grey that to give a seat to this officer would "probably excite surprise," but he approved the proposal. Earl Grey rebuked Sir H. Young for the irregularity of publishing Mr. Morphett's propositions while the Council was not in session, and the Governor at great length defended himself. Parliamentary Papers, vols. xxxvii. and xxxv. 1850 and 1851.

sixteen representatives the names of George Fife Angas, who had been one of the founders of the colony, Mr. F. S. Dutton, the Kapunda mine owner; Mr. C. H. Bagot; Mr. J. Hart; Mr. A. L. Elder; Mr. Davenport; Mr. G. S. Kingston, and Mr. G. M. Waterhouse, appear. The choice of Mr. Morphett as Speaker seemed to imply that amicable relations would be maintained with the Governor, with whom Mr. Morphett had previously co-operated, and of whom he was the nominee. There was, however, a probability of disagreement with Earl Grey, who had refused to accede to recommendations by the former Council on the appropriation of the land revenue, and had distinctly "declined to sanction any departure" from the instructions to the Governor as to the payment of the South Australian bonded debt by instalments.[1] The Governor himself, though there were in the House vigorous opponents to his cherished project of navigating the Murray river and connecting Goolwa with Port Elliott,[2] was much respected; and there were no burning questions in the little community, which had steadily prospered from the date of Governor Gawler's removal. By common consent the deracinating of Downing Street misrule, and the sowing of the seed of self-government in each colony, were tasks which, having been taken up by Wentworth, were left, at least for a time, to his care. One of the Acts of the first session secured to Charles Sturt, "the early benefactor of the colony," a life-pension of £600 a year. The Governor commented upon it as an act of "wise liberality;" and, as the spontaneous result of representative institutions, it deserves to be recorded with their growth.

The early craving for representative institutions in Van Diemen's Land has been recorded, with Lord Stanley's reflection that, in a community consisting so largely of bond and freed men, the experiment must needs be perilous. In March 1848, Earl Grey told Sir W. Denison that he hoped at once to submit a Bill which would provide for a Representative Assembly for

[1] Parliamentary Papers, vol. xxxvii. p. 53. 1850.

[2] In 1850 he had offered a bonus of £4000 for successful navigation by two iron steamers "of not less than 40-horse power and not exceeding two feet draft of water when loaded." Parliamentary Papers, vol. lxiii. p. 19. 1853.

the island. The startled Governor promptly retorted that an "essentially democratic spirit actuated the mass of the community," and that there must be an Upper Chamber to protect the colony. Its members, in order to ensure their independence, ought to be "appointed or elected for life." When the successful resistance in Sydney crushed Earl Grey's first scheme, he sent the report of the Privy Council on the subject to Sir W. Denison, and told him that Van Diemen's Land would receive a Constitution similar to that existing in Sydney. The Governor at great length argued against a single chamber, prone by nature to grasp at executive power. He reiterated his advice that if a change were deemed needful for Van Diemen's Land "a second chamber should be constituted at once by authority of Parliament." Although Sir W. Denison, with regard to transportation, found favour in Earl Grey's eyes, the latter would not be guided by him in Constitution-mongering, but answered his arguments in a voluminous despatch (11th April, 1850).

The result was that, in order to create "a form of government suited to the circumstances and state of society" in the colony, the Earl determined to force upon it the form existing in Sydney, with a degradation of the suffrage from £20 to £10 which, in spite of its condemnation by Wentworth, Earl Grey grafted on his Bill in the House of Lords in 1850. Lest there should be any doubt about Earl Grey's proclivities or his willingness to jeopardize life and property in the colony by entrusting their control to a class containing a large number of emancipated convicts, Earl Grey took measures to make his intentions clear.

Lord Stanley's Act, 1842, conferring the franchise (£20) in New South Wales, provided that no man should be entitled to vote who had been "attainted or convicted of any treason, felony, or infamous offence," unless he shall have received a free pardon or one conditional on not leaving the colony, or shall have undergone the sentence or punishment adjudged, &c." The provision was retained in Earl Grey's Act of 1850. Sir Wiliam Denison foresaw hardship entailed upon the conditionally pardoned. The forms of pardons had undergone a change. There was no desire to retain pardoned criminals in the colony, and the condition attached merely barred them from returning

to Great Britain, or to the colony from which they had been transported.

It was repulsive to the minds of Earl Grey and Sir W. Denison, to deprive emancipists of power over the lives and fortunes of the industrious and honest. The spirit of Governor Macquarie lived again. "The effect would be (the Governor cried) to disfranchise all those who having received conditional pardons (according to the later form) have not yet undergone the whole of the sentence passed upon them." Surely the English Government did not intend this. Earl Grey sympathized with the afflicted Governor, and "authorized" him to propose a Bill to relieve the conditionally-pardoned convicts from the disqualification cast upon them by the Constitution. The Act to enable law-breakers, or "persons holding certain pardons," to assist in creating law-makers, was accordingly passed in 1852, was assented to by the Governor, and was finally submitted for the Royal approval by the Duke of Newcastle, who presided at the Colonial Office in 1853. The shade of Macquarie was appeased.

Earl Grey's Constitution Act (13 and 14 Vict. cap. 59) comprehended Western Australia. Prospective provisions permitted the creation of a Legislature similar to the one existing in Sydney. Even Earl Grey could hardly attempt to give votes to a small population into which he was so rapidly pouring convicts that, having grown between 1829 and 1848 to 4622, it increased to nearly 15,000 in 1859. Ten thousand male convicts were transported thither before the system was discontinued in 1868. There was still a large Imperial expenditure, and after prescribing to South Australia the condition that representative institutions should be withheld until the colony could bear its own burdens, it would have been outrageous to force them upon the new penal settlement in Swan River.

The administration of Crown lands in New South Wales and Victoria was bad in itself as initiated by Earl Grey, and its evils were multiplied by the discovery of gold in 1851 in such quantity as, by social convulsion on the spot, and rapid rush of immigration from abroad, to shake society to its foundations. The good sense of her leading men averted the mischief which would have been entailed by adoption of Earl Grey's original

Land Regulations (1847) in South Australia. If gold had been discovered in that colony there would have been nothing in the Land Regulations to incommode the community. As Earl Grey gravely asserted that "regulations different in form but the same in principle were established" under the Waste Lands Act in "New South Wales, South, and Western Australia," it is open to his friends to defend his veracity at the expense of his understanding, by alleging that he never comprehended the principle advocated by Gibbon Wakefield, and insisted on in South Australia — that while the natural pasturage should be freely and cheaply available, the license to use it should confer no right to bar a public sale of the freehold when required.

That Earl Grey's Orders in Council (of 9th March, 1847) would be a stumbling-block was singularly proved by an incident in the life of the despised aborigines. Though their tribal right was collective and common over their domains, there were instances in which, from repeated residence at or near the same spot, a man or a family was recognized as having acquired special adscription to one place, and cursory observers mistook it for separate ownership. Tribes sometimes resorted so regularly to the same spot for fishing or hunting purposes, that if ownership could anywhere be recognized by man, the Australian title was indefeasible. In the mountains amongst the sources of the Murray and Tumut rivers, periodical visits were made to feast upon the larvæ of a large moth found in myriads. In Queensland, where the Bunya Bunya[1] tree grew abundantly in a special district, different tribes assembled to eat the large beans found in the cone of the tree. To each tribe common consent assigned a certain tract. On the Barwon river, a Commissioner of Crown Lands, Mr. Mayne, discovered a place where, by skilful disposition of large stones in the rocky river-bed, the natives had constructed divisions in which large numbers of fish, when once carried thither by the stream, were easily caught. The ingeniously arranged rocks deflected the current without being disturbed by the heaviest floods. Mr. Mayne very properly requested that a square mile might be reserved with right of access so as to secure "the fishery" to its constructors. He did

[1] Araucaria Bidwillii.

not think that they had been barred from their property in 1850, but the granting of leases would "confer powers that in unworthy or inconsiderate hands (and many such there are among the men entrusted with the charge of stations) are susceptible of abuse." There ought to be "some general clause," also, to reserve free hunting privileges for the natives.

There was a despatch from Earl Grey (February 1848), elicited by an entreaty of the Chief Protector of Aborigines in Port Phillip, who urged that "suitable reserves" should be formed for the natives, or they would have, under Earl Grey's leases, "no place for the soles of their feet." The pragmatic Earl thought large reserves "of very doubtful utility even if practicable," but was willing to sanction small ones vested in trustees "not for the maintenance of the natives in their savage condition," but "to be cultivated by them or for their advantage." He would also form "schools both for adults and young people." To the "omission to instruct the natives in the arts of industry he attributed" the general "failure of experiments in their education." He hoped to induce them to "remain as they advance in life in a state of civilization," and to "destroy that desire to return to a wild and roving life, which has generally influenced those whose education has not partaken of an industrial character."

Absurd as the despatch was, Sir Charles Fitz Roy strove to make some use of it, when Mr. Mayne's letters were received, by requesting the law officers to prepare such conditions in leases as might secure to the aborigines the right to walk upon their native soil. He also resolved to reserve for them the square mile including their "extensive permanent fishery" on the Barwon. The Attorney-General reported that Earl Grey's Waste Lands Act of 1846, and his Orders in Council of 9th March, 1847, were so framed as to prevent the insertion of conditions to secure access of the natives "to lands remaining in an unimproved state." Her Majesty by a new Order might meet the case. It was not congenial to Earl Grey (who had in 1846 striven to abrogate all hunting and fishing rights of the Maori race) to adopt words which would directly preserve rights of the weak Australians.

A new Order in Council[1] enabled the Governor to insert in a pastoral lease conditions, &c., such as might seem to him requisite "for securing the peaceful and effectual occupation of lands comprised in such leases, and for preventing the abuses and inconveniences incident thereto." It might safely be predicted that as the Earl refused to declare that the native rights deserved respect, they would not be respected. He coolly told the Governor that the provision would enable him "to prevent the injury to the public which would result from the absolute exclusion of natives or other persons travelling or searching for minerals, and so forth." It was known that on the skirts of settlement many persons were taking their own method of excluding natives, by shooting them. Earl Grey was not altogether ignorant of the fact, for in commending to the Governor[2] the protection of the natives, he added, "The evil of occasional depredations and acts of violence between settlers and natives in these outlying districts, is one which it is vain to expect can be wholly prevented." His new Order in Council (18th July, 1849) contained an important provision. It made all pastoral leases transferable, and rendered it more difficult than before to withstand the efforts made in the colony and in England to convert the temporary pastoral license into the equivalent of an assignable freehold.

There was a general provision in the first Orders in Council made under the Waste Lands Act (1846), which was mainly a repetition of former regulations, and which was relied upon to preserve the Crown rights. Nothing in the

"Regulations or in any lease to be granted under the powers hereby vested in the Governor shall prevent the said Governor . . . from making grants or sales of any lands within the limits of the run or lands comprised in such lease for public purposes, or disposing of in such other manner as for the public interest may seem best such lands as may be required for the sites of churches, schools, or parsonages, or for the construction of high roads or railways and railway stations, or other internal communications, whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for public

[1] By the Queen. 18th July, 1849.

[2] Despatch, 11th February, 1848. Parliamentary Papers, vol. xxxvii. p. 76. 1850.

buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any town or village, or as the sites of public quays or landing-places, . . . or for the purpose of sinking shafts and digging for coal, copper, lead, or other minerals, . . . or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the colony . . ." (Cap. 2, sec. 9, Orders in Council, 9th March, 1847.)

Volumes were to be written, and high legal opinions taken, as to the true import of these words. The maxim that *expressio unius est exclusio alterius*, and the legal rule of construction that general words following an enumeration of particulars must be held to relate to things *ejusdem generis*, were obstacles to the Crown. On the other hand, the Crown tenants had no means of enforcing their presumed rights. Another section (6th) in the same chapter was in melancholy contrast to the wise arrangement made in South Australia. There the simple rule, recommended on the spot and sanctioned by the Queen, was—"Nothing in these regulations, or in any lease to be granted under the powers hereby vested in the Governor, shall prevent the said Governor from selling any land comprised in such lease, or from resuming such lands for any purpose of public defence, safety, improvement, convenience, or utility."[1]

The Order made by Earl Grey for New South Wales (cap. 2, sec. 6) was: "During the continuance of any lease of lands occupied as a run, the same shall not be open to purchase by any other person or persons except the lessee thereof. But it shall be lawful to sell to such lessee any of the lands comprised in the lease . . ." It required some effrontery to say that these regulations were "different in form, but the same in principle." Nevertheless such an assertion was made by Earl Grey in his book on Colonial Policy (1853). The vicious principle which constituted their difference was a deadly poison in New South Wales and in Victoria. Mr. Latrobe, who shrunk from no labour, and in numerous journeys on horseback had become thoroughly acquainted with the territory, saw at once how dangerous it would be to deprive the Crown of power to sell

[1] Order in Council. Buckingham Palace, 19th June, 1850. Parliamentary Papers, vol. xxxvii. 1850.

land, except in satisfaction of the pre-emptive claim of the pastoral lessee in Port Phillip. In New South Wales the squatting districts were far removed from the metropolis. The barrier of the Blue Mountains had to be passed before such districts could be seen. The unseen interior excited no cupidity. In Victoria, where the land was far richer and less broken by sterile tracts than any within a hundred and fifty miles of Sydney, a man might ride from Melbourne or Geelong, and find himself ere sunset amongst the homes of the squatters Piteously Mr. Latrobe, while Superintendent, protested against the evils he was not powerful to prevent.[1]

The division of the colony into settled, intermediate, and unsettled districts did not meet the case. In Sydney the settled districts comprised the nineteen contiguous counties then existing, and two reputed counties (one including Port Macquarie, and another the town of Brisbane at Moreton Bay). It embraced also lands within ten miles of Bathurst, Ipswich, and a few other places at the Clarence and Richmond rivers, &c. The intermediate districts contained other counties about to be formed before 31st December, 1848. The unsettled districts contained all other lands in the Sydney or Middle district. In the Port Phillip district, the settled district contained lands within twenty-five miles of Melbourne, within fifteen of Geelong, and within ten of Portland and Alberton (Belfast and Warruambool were subsequently added on the recommendation of Sir Charles Fitzroy by an Order in Council dated 11th August, 1848, at Osborne House). There were then only three counties in the province—Bourke, Grant, and Normanby. They, with Gipps' Land, except so far as settled districts were provided for within them, were to form the intermediate districts, and the rich lands

[1] Mr. Latrobe struggled in vain to prevent a large "special survey" from being taken up within a day's ride of Melbourne. The acuteness of the buyer prevailed with the Sydney Government, and 28,000 acres passed from the Crown, at the price of £1 an acre, within a day's ride of Melbourne. It is not worth while to dwell on the particulars, though they engrossed much attention at the time, and led to a discontinuance of the system of selling such special blocks. The buyer applied again for a similar block, but Mr. Latrobe told Earl Grey that as the district was "on the point of separation" from New South Wales he "assumed authority" and refused to allow the purchase. Parliamentary Papers, vol. lxiii. p. 89. 1853. Sir John Pakington approved.

of the West, between Portland and Port Phillip Bay, were absorbed with the remainder of the colony under the term unsettled districts subject to pastoral leases and pre-emptive claims of lessees. In the unsettled districts leases were to be for fourteen; in the intermediate, for eight, years. These arrangements were gravely defined in the Orders submitted for the Queen's approval by Earl Grey.

Mr. Robert Lowe was a member of the Legislative Council, when the Orders in Council arrived in Sydney, and being put upon a Committee to which they were referred, brought up (as chairman) a report in September 1847. Little attention was paid to it in the colony, where it was known that in a brief space of time he had appeared as a champion for rent rather than sale, and had argued with equal ability on the contrary side. In 1847 he advocated a reduction of the upset price of £1 an acre. That price was "shown by reason and experience to be utterly unattainable." If it were to be maintained, the territory might be "divided into two classes, the confiscated and the unconfiscated."

Mr. Lowe took a very different view from that of other lawyers, as to the rights conveyed to the squatter by the Orders. As against a fellow-subject they gave "every muniment which can give permanence to possession. As against the Crown they leave him as they found him, utterly defenceless." In the power given to a Governor to dispose of lands for purposes of "public defence . . . &c., words more explicit and more comprehensive, to denote the absolute dependence of the squatter upon the Government, could not possibly have been employed." Mr. Lowe saw a danger in the high price of Crown land. As sale would be impracticable, the squatter's temporary occupation was equivalent to permanent alienation."[1] He was not restrained by any sense of having been equally vigorous on the opposite

[1] Dr. Bland wrote a letter impeaching Lowe's report. Bland was a member of the Legislative Council, but preferred to send his cumbersome arguments to Downing-Street rather than trust to what he could say in the House. Mr. Lowe also, in June 1847, wrote an address to "Fellow Colonists," attacking the Orders in Council, and sent a copy to Earl Grey. Lord Stanley's Act of 1842 and the Orders of 1847 would "wrench from us for ever the possession of our own territory." Earl Grey curtly told the Governor that he could not concur with Mr. Lowe.

side. Uninfluenced by the variable rhetorician, Sir Charles Fitz Roy and his advisers prepared regulations under the Orders in Council, and submitted them to Earl Grey. What Crown lands there were in the settled districts were to be leased for a year. The provision was almost meaningless near Sydney, but significant at Melbourne. Within the settled districts a lease was to be no bar to sale, but those districts were of petty extent in Port Phillip, and the bulk of the territory was to be subject to the fourteen years' leases, the pre-emptive claim of the lessee, and an absolute bar against sale to other persons. No one at that date weighed the probable consequences in the event of a large immigration, and a pressure to acquire land.

In 1848 the discovery of gold in California drew away some colonists to America. In that year it has been seen that Mr. Lowe was enabled, by Parkes and others, to oust Dr. Bland from the representation of Sydney. Though Wentworth was at the head of the poll, the defeat of his friend Bland was notable. Only deep-rooted personal admiration for Wentworth saved him from a similar fate. Under these circumstances Mr. Lowe, who had not at that time any prospect of a career in England, affected deep interest in the colony, and stepped forward as a leader. In moving for a Committee on the management of Crown lands in 1849, he omitted Wentworth's name. A ballot was demanded by a Port Phillip member. Wentworth's name was chosen, and that of Lamb (Lowe's other colleague) was rejected. The report was a laboured condemnation of the upset price of £1 an acre, fixed by Lord Stanley's Act of 1842. Its language was far more measured than it would have been if the Speaker (Sir C. Nicholson), Mr. James Macarthur, Deas Thomson, Charles Cowper, and Edward Hamilton, had been voiceless. Wentworth, lazily or contemptuously, hardly attended at the inquiry.

There was a prevalent misunderstanding and distrust of Gibbon Wakefield's theories. The report declared, and no doubt the Committee believed, that the high price had destroyed the land fund, and that a low price (5*s.*) would restore it. Experience has shown that the Committee was wrong, and that where the highest price was fixed, in order to attain Wakefield's "sufficient price," there (Canterbury, New Zealand) the most

ample fund was obtained, and there also unexcelled prosperity was seen. But the egregious error into which the Committee fell about the value of the pre-emptive right of the squatter was a warning to all theorists, who dogmatize about practical affairs, and legislation affecting them.

"Instead of these expensive and burdensome leases, the price of land should be reduced to 5*s.* an acre; the squatter should be permitted to remain in occupation of his run on the present terms till required for sale; instead of his present worthless right of pre-emption he should be allowed a pre-emptive right at a rate of not less than 5*s.* an acre[1] over the whole of his run . . . and in case he should be unable or unwilling to exercise that right, he should be allowed compensation for his improvements."

The Colonial Land and Emigration Commissioners, Mr. Murdoch and Mr. Frederick Rogers (afterwards Lord Blachford), furnished Earl Grey with a counter-report, and Earl Grey declined to effect changes. Mr. Lowe soon afterwards migrated to England, and took but little interest in colonial affairs, except when invited to thwart Wentworth. Hundreds of books and pamphlets have been written upon the land question in Australia. The conscientious and laborious Latrobe[2] supplied an exhaustive summary of the effect of Earl Grey's Waste Lands Act, and the Orders in Council in Victoria. The difficulty of determining the boundaries of the three districts into which the colony was divided by the Orders in Council; the applications for leases; the caveats lodged by others against the bounds specified in the applications; a Disputed Boundary Act passed in Sydney (June 1848), prescribing the functions of Commissioners to investigate and report; the receipt of their reports before January 1851,—need occupy no more space here than is necessary to prove, that such preliminaries consumed time and largely affected the date at which the leases could be issued.

Some of the decisions of the Commissioners were reversed on

[1] Had this jejune proposal been adopted, hundreds of thousands of acres which have since been sold at from £2 to £11 an acre would have been bought at five shillings.

[2] Parliamentary Papers, vol. lxiii. p. 97. 1853. Despatch to Sir J. Pakington, 3rd September, 1852.

appeal to the Law Courts. Mr. Latrobe's staff of surveyors was inadequate to the work of measuring nearly nine hundred runs, and performing current work. On the 1st July, 1851, the Port Phillip province became the separate colony of Victoria, and no lease had been issued in Sydney or in Melbourne. In October 1851 it was notified in Sydney that the delay had been unavoidable, and that January 1852 would be the date from which the leases would commence. Mr. Latrobe had been troubled at home, and by orders from Sydney. In 1847 he had caused land to be put up for sale near the Werribee river, and the pastoral lessees prepared to contest his power by warning the public against bidding, whereupon the alarmed sub-treasurer withdrew the lots from sale. Mr. Latrobe's legal adviser on one ground (that a squatter had no right of pre-emption, but only an option); the Attorney-General in Sydney, on other grounds (public utility or convenience), held that the Government could sell the land. The latter gentleman (Plunkett) hinted at future complications, when he recommended that "care should be taken when the lease to Messrs. Moore and Griffiths is prepared that those sections be specially excluded." He seemed to imply that the Crown would be powerless for any purpose of public utility, to sell any land after its inclusion in a pastoral lease.

The Sydney Government resolved that the sale should be held, the title guaranteed, and the objectors be warned that they would be prosecuted for damages for any prejudicial action. But on further inquiry it was found that the Government could not so summarily determine the rights, or inchoate rights of applicants for leases of land legally held under pastoral license, and in December, Plunkett and Foster (Solicitor-General, and an able lawyer) gave a joint opinion, that prior to issue of a lease of the land in question (under Earl Grey's land orders), and its expiry or determination, by notice in the manner provided,—"no portion of it could be legally put up in the way suggested."

At Colac, in 1848, Mr. J. P. Robinson objected to sale of land. Mr. Latrobe urged that the district "ought certainly to be included in the intermediate lands," and "never to be included in any lease granted to Mr. Boyd (Robinson's senior partner);" but in 1849 Mr. Latrobe's hands were weakened by a decision

in Sydney, that the land in question could not be sold. One application in 1847 deserves notice. An enterprising speculator (who afterwards secured a special block of 28,000 acres near Melbourne) had a dispute with a neighbouring squatter. Arbitration was resorted to, and was fatal to the speculator. He boldly applied to purchase 10,000 of the acres of which the arbitration deprived him. It was unknown at the time whether the land would be placed within the "intermediate" or the "unsettled" district. The Sydney Government decided (March 1848), that "Mr. Clarke's application for purchase cannot be entertained at all until it shall be decided within what class of lands Mr. Coghill's run will be placed."

The unhappily placed Latrobe strove in 1849 to induce his superior officer in Sydney to cause the "settled districts in Port Phillip" to be extended. In 1850 he pleaded that the decisions already announced were "unfavourable to the public." Individual enterprise was checked, and the gradual development of the country had been "seriously retarded, the public interests and requirements being temporarily set aside, and made subservient to what must in truth be considered the private interests of individuals." Thus wrote the man who was afterwards pertinaciously assailed as the contriver of wiles to deprive the public of access to the lands of the Crown. Intelligent he was, and supremely conscientious. It is perhaps impossible now to mark out any course by which in his subordinate position he could have given effect to his honest desire to benefit the community. Nothing but a bold stand, which might have failed to do more than sacrifice himself, can be suggested. Not the fear of that sacrifice would have deterred him, if he had been combative and reckless of the feelings of others. It is ever to be regretted that the authorities in Sydney did not, with a vehemence which might have startled Earl Grey, urge that his mischievous orders were fraught with future woe, and that the principle adopted in South Australia ought, even, if need be, at cost of trifling compensation, to be called in to save Port Phillip from danger. The only palliation to be extended to them is that they could not foresee the impending wave of immigration about to roll with a mighty tide upon the land, after the discovery of gold in 1851.

In December 1850, when the separation of Port Phillip was

imminent, an unpardonable decision bound yet closer the hands of Mr. Latrobe. In the colonial proclamations, under Earl Grey's Orders in Council, sites for town and suburban lands were reserved, directly or by implication. Some suburban lands well adapted for agriculture were advertised for sale near Kyneton. Neighbouring squatters (within whose runs the lands had been comprised before the issue of the Orders in Council) stepped forward to object to the public sale, and claimed, under pre-emptive right, to buy the lots themselves at the minimum price of £1 an acre. Mr. Latrobe sanctioned the withdrawal of the land from auction. The Sydney Government betrayed unusual weakness. Plunkett (Attorney-General) and Manning (Solicitor-General) declared that the question was difficult and doubtful, and that "although the Governor has the actual power to cause these lands to be sold to the highest bidder, yet that such sale would not be in accordance with the spirit of Her Majesty's Order in Council." The claims in question, and "every other pre-emptive claim of the kind, which is not over-ruled by a strong public necessity, should be conceded." One blunder Sir Charles Fitz Roy avoided. He so far yielded to Mr. Latrobe's arguments, as to direct that the price should be, not the minimum of £1, but what Mr. Latrobe might reasonably have expected from public competition.

If ever there was a case in which the Government was justified in adhering strictly to its power, the Kyneton case was one. Deas Thomson could not have forgotten the promptitude of Governor Gipps, who in 1841 was appealed to by Governor Hobson, about a contemplated allotment of lands at Wanganui by the New Zealand Company. "You will without loss of time (wrote Gipps) direct the police magistrate at Port Nicholson, to notify in the most public manner possible, that no such selections will be acknowledged by Her Majesty's Government." He sent a copy of his letter to the magistrate to preclude delay, with an order "to act upon it as soon as it shall reach him." Such a spirit was required in Australia in 1850. But it was not there. Mr. Latrobe was roused to more than usual resistance.

"I have been totally unprepared for such a decision, and entertaining as I do so different an impression of the spirit and intention

of the Orders in Council,[1] and of the consequences of any such construction as that given to them in this instance by the law officers of the Crown, to the welfare of the district, I am justified in hesitating to carry this decision into effect, and urging upon his Excellency the propriety of a reconsideration of the question."

He argued cogently that the only advantages which the pastoral licensee could fairly claim was "assured occupation for depasturing purposes solely for a certain term," proper encouragement to become a purchaser, and compensation for improvements which might fall into other hands. The Government was bound to exercise freely the power to make reserves by means of which public demand for land sales might be met.

The law officers in Sydney, rather evasively, said that Mr. Latrobe's letter "added to their doubts," but that they were struck with his assertion, resulting from local knowledge, that the claims of the Kyneton squatters were over-ruled by a strong public necessity. They shabbily suggested that as Port Phillip was about to be separated, Sir Charles Fitz Roy might abstain from deciding the point, and it was left pending until there might be a Governor and Executive Council in Victoria to deal with it. Separation being effected on the 1st July, 1851, Mr. Latrobe, as Governor, was confronted with many problems to tax his administrative powers. Amongst the most exacting was the mode of protecting life and property, and maintaining the rights of the Crown, when the earth seemed to yawn to reveal its golden treasures, and a mixed horde, comprising the adventurous and the dissolute, clamorously rushed to their prey. In August 1851, a proclamation was issued asserting the rights of the Crown, and regulations were promulgated as to the mode in which gold-digging might be resorted to. The gold was scattered widely in districts where, if the Kyneton precedent (as laid down by Sir Charles Fitz Roy) should be adhered to, the squatter might claim the land at a price of £1 an acre.

There were less than 14,000 souls beyond the settled districts in Victoria at the date of separation, and 66,431 within them.

[1] *Vide* p. 530, *infra*.

The rate at which population poured in may be inferred from the fact that from 77,345 in 1851, it had, in 1855, increased to more than 360,000. By the concession which Sir Charles Fitz Roy prescribed at Kyneton, the whole of the desirable land held under pastoral license throughout the so-called unsettled districts, would have been claimable at £1 an acre by the licensees who had duly applied for leases under Earl Grey's Orders, and yet there might be hundreds of thousands of eager immigrants greedy to compete for the land at auction. Mr. Latrobe had made reserves amounting to 681,700 acres, but the bulk of the land was untouched by them. There were more than 56,000,000 acres in the colony. Distracted by his various duties, but working cheerfully, the new Governor, on the 1st October, asked his freshly-appointed law officers, W. F. Stawell, (Attorney-General), R. Barry (Solicitor-General), for their opinions on the Orders in Council and the alleged rights under them. He did not receive their opinion until the 12th January, 1852,[1] and when it was received it was found to be equivocal. The general words "or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the colony,"[2] they were constrained to divide. Gold-diggers were arriving in thousands, and it was plain that unless gold-seeking could be stayed altogether the scattered seekers must have room for their feet, and the camp-followers needed to supply their wants must be settled somewhere near them. The law officers announced that the first half of the words quoted were to be construed by the *ejusdem generis* rule.

They could not be strained beyond the purposes enumerated previously in the Order. Roads, railways, recreation-grounds, quay sites, landing-places, sites for mineral shafts, church and school sites, afforded little hope to a Governor charged with the responsibility of providing for the immigrating thousands. But the law officers, as well aware as he of his difficulties, thought to cut the knot by dividing the sentence. "Otherwise facilitating the improvement and settlement of the colony," though conjoined in the Order in Council, might be disjoined and made

[1] Parliamentary Papers, vol. lxiii. p. 135. 1853.
[2] Cap. ii. sec. 9. Orders in Council.

totally distinct, so as to allow "the progressive expansion of the colony." They might "reasonably suppose that the framers of the Orders" had such an object in view. The creation of inland towns being demanded, "the Governor, when satisfied of an absolute necessity, would be justified in selling or reserving for immediate sale such portions of the lands in the intermediate and settled districts as may be required for the formation and support of those towns or villages." But "without reference to the sites of towns or villages, or present and pressing public requirements," they were of opinion that it would not be in accordance with correct interpretation of the section,

"nor within the spirit of the Orders in Council," "to reserve for sale portions of land in these districts, with the view of meeting the prospective wants of the community. Power to make such reserves would in effect place merely at discretion the right of the occupant to a lease for a certain number of years so clearly recognized by the Orders in Council, and thereby frustrate the principal object for which those Orders were framed." "The lands to which we have alluded are not subject to the pre-emptive right of the occupant, nor should they be included in a lease, but until an actual sale the possession of such occupant should not, as we conceive, be disturbed."

The deliverance of such an oracle was cold comfort for the Governor. It denied to him the exercise for the public weal of powers which he was ambiguously told he possessed. Towns or villages would no doubt spring up, but he was not to reserve lands to meet their prospective wants. It was only by wide and sweeping reservations that "the settlement and improvement of the colony" could in any way be provided for beforehand; but he was distinctly told that he could not make "reserves to meet the prospective wants of the community."

What the opinion seemed to promise to the ear it violated to the hope. It temporized with the whole question, and left the Governor without a compass to guide him except by continual reference to his law officers, who would expound to him what they meant by "absolute necessity," which would justify his doing in a particular locality that which he was forbidden to do throughout the colony. It was the worst kind of opinion which could have been pressed upon Mr. Latrobe. Conscientious—he would have obeyed the law clearly expounded, and

worked manfully to procure its repeal. Impressible, and wanting firmness to act sternly even at the demand of duty, he was thrust into a path in which every step was doubtful if his law officers were to be trusted. At a later date he obtained a further opinion from his Attorney-General and Mr. Croke (Solicitor-General) of a less ambiguous character, as to his power to dispose of lands for the purposes enumerated in the 9th section of the Orders in Council, although such lands might be comprised in a lease. But the issue of the leases was indefinitely postponed. The staff employed to survey the boundaries was unequal to the task. The whole Civil Service was disordered by the departure of some of its members to the gold-fields, and the insufficiency of salaries to meet augmented charges of living. Sir John Pakington's despatch, in answer to Wentworth's Remonstrance, did not reach the colonies until 1853, and it was not known until then that the Secretary of State freely included Victoria and South Australia in the concessions offered by the Crown to New South Wales. Mr. Latrobe wrote able despatches depicting the condition of affairs. Earl Grey seems to have read them without understanding. In no other manner, if he read them at all, can his statement, that the Land Regulations in South Australia were "the same in principle" as those in Victoria, be accounted for.

The Legislative Council took up the question in 1852. Squatters had petitioned for issue of their leases. Other persons prayed that the leases might be withheld until proper representation might be made to the Queen, and the Orders in Council might be altered and adapted to the circumstances of the colony. It is astounding to an impartial inquirer, that neither in Victoria nor in England was there any authoritative statement that all which was required was to adopt the system sanctioned in South Australia—not coupled with the wild disorder of free selection before survey which was at a later date resorted to in New South Wales and Victoria, but with a sober administration of the Crown Lands Department by a Government which would judiciously meet the wants of purchasers in appropriate districts.

On 28th July 1852, Mr. J. P. Fawkner moved an address requesting that the boundaries of the settled districts might be

enlarged so as to include the whole of the intermediate districts together with all country in which gold could be profitably worked.[1] Mr. William Rutledge, an elected member, moved as an amendment that "leases be immediately issued to the occupants of Crown lands, to bear date on the 7th April, 1848, in order that the lands may be opened for sale under the Orders in Council of 9th March, 1847, in quantities to meet the demand of the increasing population of the colony." The amendment was carried by eighteen votes against nine. But the latter included Mr. O'Shanassy, already distinguished amongst his brother members, and several smaller local celebrities. The whole number of the House was thirty. The Attorney-General and all the nominee phalanx voted in the

[1] Mr. Fawkner was once a squatter. On 20th November, 1847, he applied for a run of 12,800 acres at Moonejettee, which he described as capable "of grazing 400 to 500 cattle, or from 3000 to 3500 or 4000 sheep at the utmost." It was near "the Monument" (as Dryden's Rock near Mount Macedon was then called), and bounded by land occupied by a Mr. Dryden. Fawkner pathetically described it as "thickly wooded and nearly all mountain ranges, and *Poor* and very scrubby." (He dealt largely in capital letters and italics.) In May 1849 he notified that he had sold his "stock and interest therein." Five days afterwards he withdrew his letter to his Honour (Latrobe), "asking permission to transfer his run." The agreement about the sale had "disappeared," and the buyer "then refused to complete the contract." The law officer of the day thought Latrobe would not be justified in acceding to Fawkner's request. Before he was apprised of this decision Fawkner had sold the station (Moonejettee) to another person, and asked that the lease he had applied for might be issued to one Sutcliffe, the new purchaser. Again it was found that the request could not be complied with. Fawkner, through a solicitor, averred willingness to support his statements "by any evidence your Honour might desire." Caveats had been lodged against Fawkner's original application for a lease; and Sutcliffe, to whom the license was issued, wrote (February 1850), that Fawkner informed him of one lodged by a Mr. Brock, but was silent as to two caveats lodged by other neighbours, Messrs. J. and G. Cain. Their claims cut down Sutcliffe's pasture-land to one square mile. The Commissioner of the district informed Sutcliffe that expense would be incurred in contesting the caveats, and Sutcliffe could not meet it. He applied to Latrobe for redress. The affair was wound up by a sale from Sutcliffe to Brock of his stock and right of run. The purchaser, being a better man of business than Fawkner, arranged also the other caveats. Fawkner's failure seems to have soured him, for he lost no opportunity, in season or out of season, of inveighing against the class of which he was a member when he applied for the Moonejettee lease.

majority. It is difficult to discover in what way, without discarding the opinion he had given to the Governor, he contemplated "meeting the demand of the increasing population," for his and Mr. Barry's opinion had averred (in January 1852), that neither by correct interpretation, nor within the spirit of the Orders in Council, could the Governor reserve lands "with a view of meeting the prospective wants of the community."

There was wide commotion in the community, whose numbers had been doubled in twelve months by gold-hunters. Like drunkards, many, who profited nothing, could not abandon the pursuit. Their early interference in general politics was trifling, but when the first scramble for alluvial gold was over they threw their weight into what was deemed the popular scale.

The question whether a lease conferred such pre-emptive right on the lessee as absolutely to bar a sale to any of the public was soon seen to be the crucial test of Earl Grey's Orders. If such a principle were to be granted, a few persons might engross much valuable land in the colony. The limited area which, under the ambiguous opinion of the law officers in 1852, might be reserved for towns and villages, was unimportant, and if the pre-emptive right should be conceded that opinion might be overthrown. Loudly at meetings and vehemently in the press, the squatters were denounced. The 'Argus' newspaper, ably edited by its chief proprietor, Edward Wilson, was conducted with a savage misdirection which his friends could neither account for nor excuse. He imputed frauds and corruption to the pure-minded Latrobe. Yet Edward Wilson was humane and benevolent in private life. He assailed the Legislative Council as not lawfully representative of the colony, because it contained nominees. Yet he was unable to deny that in preaching disrespect for the Legislature *de facto* he set a dangerous example. He lived to admit the fact. But he had helped to do much mischief. His was the hand that penned, and his the energy which circulated from Melbourne to the excited crowds on the gold-fields, rabid censure and slander upon the honest Latrobe. He was abetted at the time by others; and when he had become wiser, another newspaper succeeded to the post abandoned by the 'Argus,' and filled it with as much unscrupulousness and more meditated slanders. Edward Wilson was enthusiastic enough to

believe what he wrote. With those who supplanted him mendacity was for many years a studied art.

Unfortunately the virulence of the strife provoked more determined efforts of the squatters and their friends. The selfish needed no incentive to demand the uttermost farthing in their bond. The proud would not yield to clamour what, in their opinion, the law entitled them to hold. The Speaker of the Legislative Council, Dr. Palmer, an able and upright man, drew up a statement of arguments addressed to Mr. Latrobe at an audience on 3rd August, 1852. That leases ought to date from the time of their issue (a large postponement of their effluxion), and that agricultural reserves could not be made without infraction of the Orders in Council, were two points skilfully handled. He demolished (without direct mention of them) the opinions of Messrs. Stawell and Barry, but he could not remove the former from the vantage-ground of place in which his high energy secured esteem even among opponents. The Speaker urged that the settler had no desire to impede the progress of the colony, and ought not to be accused of doing so in pursuing his "just claims. The inviolability of public faith is peculiarly a British sentiment, and constitutes the broadest and safest basis of national prosperity."

Dr. Murphy (who was at a later date to become Speaker of the Legislative Assembly) also drew up, on his own behalf, a paper on "the right of the Government and the rights of the squatters as affected thereby." He clinched his arguments by citations from Earl Grey's despatches, which laid down in express terms that "lands in the unsettled districts would (under the Orders) be put absolutely out of the power of the Crown, and be rendered unavailable for settlement for the long period of fourteen years."[1] Dr. Murphy said that after such an instruction the proclamation of the districts was an assurance

[1] Compare this with the South Australian Regulation which Earl Grey affirmed to be "different in form but the same in principle" as the Order he framed for New South Wales. "Nothing in these Regulations, or in any lease to be granted under the powers hereby vested in the Governor, shall prevent the said Governor from selling any land comprised in such lease, or from resuming such lands for any purpose of public defence, safety, improvement, convenience, or utility." (South Australian Orders, cap. iii. sec. 7.)

from which the Government could not honourably retreat, and a departure from which would constitute an act of confiscation. But while chosen champions pressed the claims of the pastoral tenants on Mr. Latrobe, others warned him of the general injustice which he would commit by handing over "sixty millions of acres to less than eight hundred persons." The "evil already intolerable . . is hourly increasing from the rapid influx of immigration from the mother country, as well as from the adjacent colonies." Agitation was rife in the land. It was not suspected that Mr. Latrobe had been one of the first to warn the Sydney Government (and through them Earl Grey) of the evils which the Orders might produce if leases should be allowed to stand in the way of general settlement; and Mr. Latrobe was too retiring and unselfish to seek to better his own position by personal explanations.

On the 17th August, Mr. Fawkner moved an address praying the Governor to "withhold the granting of all lands to all persons who have claimed or may claim lands under the so-called pre-emptive right conferred, or supposed to be conferred, by the Orders in Council, dated England, in 1847, until this matter shall have been brought under the notice of Her Majesty in Council." An amendment was moved (by a nominee member, Pohlman, Chairman of Quarter Sessions, a man deservedly and universally esteemed), which prayed the Governor to limit the pre-emptive right grants (about to be made) to the "homesteads, or such quantity of land as to his Excellency may appear proper in each particular case." Thus amended the motion was carried without a division. It was plain that this resolution was incongruous with the one adopted respecting the immediate issue of leases. Mr. Latrobe availed himself of the occasion to explain his views. Immediate issue of the leases (as prayed for on 28th July) was practically impossible. He would make every preparatory arrangement. He thought it "just and reasonable that the authorized occupant . . should feel himself secure in the undisturbed possession of those lands so long as the general interests may not demand their final appropriation by sale or otherwise for other purposes," and he would, as the Council seemed to wish, lay the whole subject before the Home Government, in order that before the issue of

leases doubts might be disposed of, "full assurance being attained that while the interests of one most important class of colonists are suitably provided for, the general welfare of the colony is in nowise perilled."

Meanwhile homesteads or other limited portions of runs could be secured under the pre-emptive right. Licensees would retain exclusive occupation until lands required on broad public grounds might be withdrawn formally, and land "clearly required for the public and general advantage of the colony" would be "brought into the market without being held subject to pre-emptive right."

Mr. Latrobe had, in 1850, shown that he conceived that the Orders in Council[1] were framed so as to leave the Governor free to consider the public good, and that the squatters' just claim was confined to assured pastoral occupation for a limited term. He was, therefore, consistent, and could honourably demand, as he did in 1852, that so far as it might be legally practicable, the Orders in Council might be revised with a view to make clear the terms in which the domain of the Queen was protected for the public behoof. But his law officers were in a more difficult position. Mr. Stawell had, in January 1852, declared that reserves could not be made by the Governor to meet "prospective wants of the community." That opinion, without bestowing full consideration on the pre-emptive right of an occupant, incidentally alluded to it.

In 1852 there seemed to be a consensus among lawyers that the Orders conferred a right of pre-emption over the whole area under lease. In concurring with the Governor's answer to the address of the Legislative Council,[2] the Attorney-General must have known that a dangerous question was only shelved. It was derogatory to confess that the Orders in Council had not been comprehended, difficult to argue with a united Bar, and impossible to maintain the government of the colony if the extreme rights contended for under the Orders should be recognized. There was a practical method by which, without admitting of former mistake or present wrong-doing, the Orders in Council

[1] *Vide* p. 522, *supra*.

[2] Mr. Latrobe's despatch, 3rd Sept. 1852. Parliamentary Papers, vol. xiii. p. 103. 1853.

might be virtually set aside. The Surveyor-General, Hoddle, was old, but vigorous. It was resolved to pension him, and to procure a younger man who would carry out with rapidity such extensive interference with the rights conferred by the Orders in Council as would make it impossible to recede from the course taken, whatever might be thought of its legality. The Surveyor-General retired,[1] and Lieutenant Clarke, R.E., then private secretary to the Governor of Van Diemen's Land, was selected for the vacant post. A man burdened with scruples might have shrunk from the task, but he was ambitious for distinction, and saw that to obtain it at that time it was necessary to do what was required at his hands, and he conformed to the necessity. Before the plan could be carried out, the Governor, who had no active part in it, submitted the whole case to the Secretary of State.

The nine members of the House[2] who had voted for the extension of the settled districts sought an interview, to

"bring in the most serious manner before his notice the total unsuitableness to the present and prospective condition of the colony of the system of leases and pre-emptive rights as contemplated by the Orders in Council of 1847, and to urge upon him to counteract by the most prompt and imperative despatches . . even the bare psssibility of these Orders being brought into operation."

Meanwhile the pastoral tenants, at a meeting in Melbourne, adopted resolutions asserting their rights under the Orders "as more fully explained in Lord Grey's despatches." Property had changed hands on the faith that the Orders would be enforced. The demand for land was "fully provided for by many millions of acres within the settled and intermediate districts." Faith must have been great or knowledge little in those who sanctioned, so absurd a resolution, which was moved by one Mr. Forlonge. It is charitable to hope that its supporters were blinded by the atmosphere in which they moved. Mr. Latrobe answered all deputations by referring to his answer to the Legislative Council, and promising to lay the matter before the Secretary of State. His despatch with its enclosures occupied more than

[1] On a pension of £1000 a year, which he enjoyed nearly thirty years.

[2] They were—J. T. Smith, H. Millar, W. Westgarth, J. S. Johnston, A. Thomson, J. P. Fawkner, J. F. Strachan, Ch. H. Dight, and John O'Shanassy.

fifty pages in the English Blue-books.[1] It is almost needless to say that he recommended no subterfuge nor dishonourable dealing. It was in no complicity with him that Captain Clarke, like Goneril's steward, gnawed asunder the cords which his master, the Attorney-General, found too intrinse to unloose.

The Governor lucidly stated the whole case. The intention of the Waste Lands Act was to secure the squatters' temporary occupation "consistently with that regard due to other interests to which as the population increased it could not but be held to be subordinate." Her Majesty's Council had not before them in 1847 clear information as to the districts which it was needful to declare "settled" in order that they might be thrown open to the public. The "extension of the pre-emptive right over the whole of the land covered by the lease was neither asked for nor dreamed of in this colony, either by the settler or the Executive Government. I speak for myself." A homestead, or a limited area for improvements, he thought it just to subject to pre-emption. He earnestly urged that in view of the population pouring into the colony the Orders should be revised. The power "to sell land when required" must be available. If, when properly interpreted, the Orders should be found to have conferred "rights which cannot now be justly taken away—I believe I speak the sentiments of the colonists as a body,—let compensation be made at any sacrifice; but at every risk let these exclusive rights, where they are seen to operate to the public disadvantage, in appearance if not in reality, be done away with." He might be asked why he found greater difficulty than was reported from Sydney. He anticipated the objection by pointing out that the bulk of the good land within a reasonable distance from the coast in the parent colony was already disposed of. His law officers also "professed to be quite at a loss to apprehend the manner in which" the Sydney Government had formed extensive reserves in the unsettled districts, and Mr. Latrobe, instead of commanding that the thing which the Governor-General had done in New South Wales should be done in Victoria, wrote: "Of this I am certain, that possessing no assurance that I hold the legal power to pursue a similar course,

[1] Parliamentary Papers, vol. lxiii. 1853.

it could not be carried out in this colony." He was more willing to receive orders than to give them. The thing was necessary to be done, but he had not resolution to do it in contravention of the advice of a man to whose energy he was so much indebted.

Mr. Latrobe sent to Sir Charles Fitz Roy a copy of his able despatch in order that he also might, if he should think fit, make known his views on the question. Sir Charles Fitzroy submitted the matter to his advisers, who in an elaborate paper condemned Mr. Latrobe's views. Erroneously assuming that a sufficiently large extent of territory had been included in the intermediate class of lands in Victoria, and could therefore be offered for sale on three months' notice at the expiration of each successive year of the term of a lease, they somewhat heartlessly said they were "scarcely prepared to hear that the inconvenience to the public from the existence of the pre-emptive right as it now stands is so great as it is depicted to be in Governor Latrobe's despatch." Extinction of the pre-emptive right, or even its qualification, they regarded as "incompatible with the preservation of the faith of the Crown, pledged by the formal promulgation of Earl Grey's Orders." They acknowledged that "it might have been preferable for the public interests if some of the principles contended for by Governor Latrobe had been recognized in the framing of the land orders." They applied their "remarks chiefly to New South Wales," but they did not state that past alienations of Crown lands over an enormous area in the older colony made their remarks utterly inapplicable to Victoria. They may have thought to influence the Secretary of State, who however proved, not like Mr. Latrobe willing to do justice, but ready to carp and cavil at every claim considered inconvenient, and to elude it by subterfuges.

Other representations from Victoria pleaded for justice to the squatters. The coarse vehemence with which Mr. Fawkner and many others denounced them as robbers was ill-calculated to make honest men surrender their lawful rights. The great bulk of them were honourable men who had worked hard, had been pioneers in the waste lands, and had no desire to obstruct the general progress. Their eager leaders in the town exaggerated the wishes of their scattered brethren in the country.

A petition to the Queen was sent by the representatives of the squatting interest; Mr. W. F. Splatt, one of the majority of eighteen who supported the immediate issue of leases, being the first signer. The prayer was for the issue of leases from the date selected in Sydney, 1st January, 1852. Mr. Forlonge sent a rambling letter to the Secretary of State. He urged that any alteration of the Orders in Council ought to be conditional upon the maintenance of accrued rights. Mr. Fawkner (foolishly styling himself the founder of the colony) wrote a long letter to the Secretary of State. He impugned the Orders in Council as having been procured by "fraudulent misrepresentations" in Sydney as to the value of land. He denounced Mr. Splatt as having said on a question of assessment of live stock, "Do you think we will tax ourselves?" He attacked Dr. Murphy, who had written in a newspaper that the pre-emptive right was worthless as the lease to the squatter.[1] Mr. Latrobe sent the papers to Sir John Pakington, but it was not the latter who had to deal with them, although his despatch in reply to Wentworth's Remonstrance, by conceding to the colonies the control of Crown lands, furnished effective arguments to his successor. By what Lord Derby called "an unprincipled combination," the Ministry of which Mr. Disraeli was Chancellor of the Exchequer fell in December 1852. The Duke of Newcastle took the seals of the Colonial Office, and allowed many months to elapse before he replied to Mr. Latrobe on the 29th November, 1853. His despatch was one long shuffle; but he allowed it to be inferred that he would be willing to lend his authority to an act of injustice, if without that authority Mr. Latrobe could not, justly or unjustly, put an end to difficulties. He concurred with Mr. Latrobe in construction of the intention of Earl Grey's Orders. If the language used in them went beyond the intention, and vested rights had arisen, there was a serious question—"between private claims and the general interest. I will not say that in an extreme case the latter must not prevail, and that vested rights must not give way, subject to such compensation as it

[1] "What is the value of a lease with these reservations (under sec. 9)? ... But it may be said, you have the pre-emptive right. Perhaps we have, at £1 per acre in the wilderness; a right of about as much value as the lease which I have calculated at a button." ('Melbourne Morning Herald.' Letter from Dr. Murphy, 1st September, 1849.)

may be practicable to give." But by insisting on rigorous interpretation of the Orders such a measure might be avoided. The leases were promised for terms not exceeding eight and fourteen years in the intermediate and unsettled districts, and in the Duke's opinion the term might be shortened at the discretion of the Governor. It was "much to be regretted" if the local Government had acquiesced in the full term. As to a lease, "the ante-dating will be strictly equitable, inasmuch as (the occupants) have hitherto had the same equitable advantage as if it had so been issued." The Duke saw no objection to dating the leases 7th April, 1848. Although the lessee in an unsettled district had exclusive right of purchase, the noble Secretary could find no provision "compelling the Governor to sell" on demand. It was "obviously unreasonable to suppose that the Governor was compellable to exercise these powers of sale." As to the construction of the much-discussed section 9 with regard to "facilitating the Government and settlement of the colony . . . without entering at length into the controversy, it is enough for me to say that the very differences of opinion which have existed among lawyers entitle you in my opinion to put on them the more liberal one as regards the requirements of the public. If the construction be legal, and I have no reason to doubt it, it ought to be adopted." The Governor would therefore, to meet "the progress of population and settlement . . . sell land . . . under the general sale regulations of the colony, though situated within a run." The Duke had Sir Alexander Cockburn, the Attorney-General, to consult, but he would not do so. Mr. Latrobe had honestly recommended a new Order in Council to remove doubts or meet necessity (compensation being given in the latter case). The Duke refused to allow the controversy to be decided on such principles. Instead of amending the Order, declaratorily or otherwise, so as to secure the lawful exercise of powers of sale, he recommended private arrangements which might defeat the inchoate rights of lessees. If occupiers would "be content to receive leases exempt from those conditions which are at once injurious to the community, and useless for merely pastoral purposes, you are fully authorized and desired to grant them." In these bargains the Government was to secure "power to resume from time to time

and offer for ordinary sale, after sufficient notice, land which may be really wanted for that purpose in the judgment of those in whom the control of the public lands is vested." To compliant occupants the Duke authorized the Governor "to make all reasonable concessions," and to grant leases for the maximum term. The Duke was ready to prepare two Orders in Council—one for altering the limits of districts, the other to substitute an assessment of stock for rent—and he hoped that the whole "very difficult and pressing question (might) be fairly adjusted" by his instructions, or "by mutual concessions and reasonable arrangements" in the colony. In one sense the Duke was, like the unjust steward, to be commended. He shrunk from asking for a legal opinion which might have prevented him from inditing so unworthy a despatch.

Roundell Palmer (afterwards Lord Selborne), eminent at the Bar of England, had (July 1853) given an opinion that the occupants had "clear and indisputable right to the leases," but were without "specific remedy to compel the execution of such leases"—no form of judicial procedure against the Governor being provided by the Act or by the Regulations. The "complete equitable title" they held was such as the "Courts of Justice in the colony would be bound and authorized to recognize, and protest against any illegal encroachment whether by the Executive Government or by private persons. I am clearly of opinion that neither of the sections referred to gives the Governor power to withdraw any part of the runs in question (assuming as I do that no forfeiture has taken place) for the purposes of sale to private persons." On the right of pre-emption Roundell Palmer was equally clear, but he thought there was no course open to an invaded occupant "except to appeal to the Courts of Justice in case of any illegal disturbance of his possessions." This opinion was not kept under a bushel, and the Duke of Newcastle would not risk the receipt of a similar one from Sir A. Cockburn. He preferred to adopt a course demoralizing to the colony, by setting an example of bad faith, and suggesting underhand negotiations to put aside the law. Mr. Latrobe received the Duke of Newcastle's tardy despatch in March 1854, having waited more than eighteen months for a reply to his exhaustive statement. He was then about to leave the colony, and it

devolved upon others to administer the waste lands on behalf of the Crown during the short interval which elapsed between March 1854 and the introduction of those constitutional changes which Sir John Pakington's answer to Wentworth's Remonstrance heralded in Australia. It is perhaps convenient to remark as a connecting link between New South Wales and Victoria, that the prospect of mineral discoveries led Sir Charles Fitz Roy in 1849, and Mr. Latrobe in 1851, to ask that a competent geologist might be despatched from England. Copper, lead, iron, and gold, had been found in New South Wales, and Sir Charles Fitz Roy wrote (1st March 1849): "An extensive gold-field is said to have been recently discovered at the Pyrenees in the Port Phillip district." The services of the officer asked for "could not fail to add greatly to the resources of the colony, extensively to benefit the land fund, and thus to open out a new field for British emigration."

Sir Henry de la Beche having, under Earl Grey's sanction, offered the appointment to Mr. Beete Jukes (who had accompanied H.M.S. 'Fly' as naturalist and geologist in her voyage to Australia), and Mr. Jukes having declined, Mr. Bristow accepted it in October 1849. Family reasons prevented him from proceeding to his post, and Mr. S. Stutchbury finally accepted the appointment in April 1850. He reached Australia in time to be consulted on the practical discovery by unscientific persons of the Bathurst gold-fields early in 1851. Mr. Latrobe was only Superintendent of Port Phillip, when in 1849 the mysterious production of a lump of gold embedded in quartz excited the expectations alluded to by Sir Charles Fitz Roy. Before Mr. Latrobe became Governor the Bathurst gold-fields had changed expectation into fact, and in a few months richer stores were unearthed in Victoria. Mr. Latrobe wrote (October 1851): "I find myself greatly embarrassed for want of the services" of "a gentleman possessed of the requisite qualifications" as geological surveyor. Sir John Pakington (May 1852), "lost no time in selecting a person whom I have every reason to believe to be fully qualified to perform the duties." Mr. Alfred R. C. Selwyn, who had been for about nine years engaged in the Geological Survey of England, was the person appointed, and while he remained in the colony it had reason to be thankful for the choice.

The condition of the land question in New South Wales may be gathered from the previous pages. The pressure which proved the vices of Earl Grey's Orders was not felt in the large territory as it was in the small one. As population might increase there would be some strain upon the administrative power of the Government in particular districts; but, speaking generally, the domain of New South Wales was so enormous, the alienated area within 150 miles of the sea-board was so great, and the Crown lands therein so barren or so limited, that no lustful eyes were cast by crowds upon lands which they saw others enjoy. The blunder which Sir Charles Fitz Roy and his advisers committed when they would not permit Mr. Latrobe to sell agricultural lands at Kyneton was not one which they could be tempted to commit in the Sydney district. Much labour was devoted to the details necessary in adapting Earl Grey's Orders in Council. New counties were proclaimed, and many others with undefined boundaries were provisionally proclaimed. The Executive Council laboriously considered the subject in all its bearings. The law-officers (Plunkett and Manning), questioned on the 23rd August, 1847, replied within five days that the Governor could consistently with the Orders in Council "reserve from leases demanded thereunder, and can resume during the continuance of a lease such lands as may be required for sites of towns with adjacent cultivation allotments."[1] The Council resolved in September, "that the reserves to be laid out for villages and cultivation lands on the great lines of thoroughfare should consist of not less than nine, nor more than twenty-five, square miles." In October they interpreted "great lines of thoroughfare" as all places where situation, soil, "building materials, water, and other elements of prosperity of inland settlements" were afforded, and "improvements of neighbouring occupations" were least injured. In May 1852, it was formally determined that "the whole of the land included in any approved reserve should be at once excluded from the description" inserted in the lease. Thus while the natural distinction between the

[1] Mr. Latrobe's despatch quoted in the text pointed out that he had been unable to do this, and that his law officers professed to be "at a loss to apprehend the manner" in which the Sydney Government had made such reserves.

territory of the Sydney district and that of Port Phillip made Earl Grey's Orders less hurtful in the former, Sir Charles Fitz Roy and his Council increased the public security by extensive reserves to meet "the prospective wants of the community," which Mr. Latrobe's law officers told him he was forbidden to do, both by the letter and the spirit of the Orders in Council.

Applications were made by pastoral tenants who felt themselves aggrieved by proclaimed boundaries, but Sir Charles Fitz Roy dissuaded the Secretary of State from any other remedy than such a modification of the original Order as would allow the tenant compensation for improvements. The duties of the Government which was bailiff of so large a domain were brought down to practical details. The Orders in Council had enacted that the rent for a run should be proportioned to "the number of sheep or equivalent number of cattle which the run shall be estimated as capable of carrying." Sir C. Fitz Roy in a special notice declared that 640 cattle (including horses as such) should "be considered equal to 4000 sheep" (January 1848). There was also at the time an Assessment on Stock Act (of September, 1847), to provide for "the protection and good government of all persons residing beyond the settled districts."

To relieve the Colonial Secretary (Deas Thomson) of the flood of business which poured upon his office, and lighten somewhat the labours of the Surveyor-General, a special department was created in 1848. Colonel Barney, C. E., who had been sent to Port Curtis in 1847, was in 1848 appointed Chief Commissioner of Crown Lands, an office of which Sir George Gipps had foretold the need. Under him there were in the Sydney or Middle district sixteen Commissioners of Crown Lands scattered throughout the land. Mr. J. C. Bidwill (an early traveller in New Zealand) was the first Commissioner in Wide Bay, whither the Commissioner of Crown Lands at Darling Downs[1] reported in 1848 that unlicensed occupants were migrating, and which was outside of the boundaries of the existing Moreton Bay and Darling Down districts.

Sir Thomas Mitchell, the Surveyor-General, enabled the Governor, in December 1848, to proclaim 18 new counties in the Sydney, and 13 in the Port Phillip, district. He made

[1] Christopher Rolleston, afterwards Auditor-General in Sydney.

representations which induced Sir C. Fitz Roy to recommend and Earl Grey to approve the establishment of branch land offices where surveyed, but unsold land, having once been fairly offered at auction, might afterwards be taken up by intending purchasers without delay or expense. But the gigantic task of surveying promptly the boundaries of runs in the territory which then embraced Queensland was beyond the power of any department.

It was at first decided that the squatters should pay. Some of them pleaded that the description of their runs by natural boundaries rendered chain measurements unnecessary, and their plea was allowed, although Sir Thomas Mitchell acutely reported that "without an accurate survey and a perfect description fixity of tenure and undisputed possession" could not be obtained. Earl Grey, with characteristic pretension, informed Sir Charles Fitz Roy how surveys should be conducted. He sent as a guide a report made to him, in England, on the subject by Captain Dawson. Unfortunately that gentleman had assumed that runs were rectangular blocks with two sides, at least, directed to cardinal points of the compass. As it might safely be asserted that no run existed in a hilly country under such conditions, Earl Grey's plan was impracticable. Nevertheless Sir Charles Fitz Roy gravely called for reports, and with equal gravity sent them to Earl Grey; to whom he said—

"Captain Dawson's suppositions (as to cardinal points, &c.) that from the small proportion that the aggregate area bears to the extent of the colony, runs must be so scattered that numerous or serious cases of disputed boundary cannot for several years occur, are altogether inconsistent with the real facts of the case. On the contrary, there are few runs which are not conterminous with others, and the boundaries are in all cases irregular."

Captain Dawson's assumption that runs were widely sundered was confuted in many ways. Hundreds of disputes were heard by Commissioners under a special Act; and after cases had thus been heard litigants resorted sometimes to the Supreme Court, to which, sitting in the metropolis, numerous witnesses from the far interior were summoned at great expense. Earl Grey did not press his propositions. He interfered less and less with the tact of the Governor and the sagacity of Deas Thomson, who, whatever their misconception of the position in Victoria,

thoroughly understood that of New South Wales. He remitted entirely to them the question of quit-rents, which had been so bitterly argued in the time of Governor Gipps. The result was that for a long period copious reserves mitigated the evils of Earl Grey's Orders in Council. Jealousy of the pastoral tenant existed nevertheless, and in 1861 contributed to the enactment of a law in which "free selection before survey" subjected the public estate to pillage, and engendered wide corruption.

The most successful application of Orders in Council was in South Australia, where the colonists moulded them as already explained. Year by year as difficulties arose amongst their neighbours they had reason to congratulate themselves on the absence of all heart-burnings and ill-will between the pastoral tenant and the would-be agriculturist. The pastoral lease opposed no obstacle to resumption of the land when required for sale, and the squatter was recognized as a friendly helper in subduing the earth. No great difficulty was encountered, when simplicity and justice regulated the principle on which the lands were occupied. The minimum price of £1 an acre was rigidly adhered to, and if Mr. Robert Lowe had been in Adelaide, he would have found few supporters of his theory that five shillings was a sufficient price, and £1 was ruinous as well as impossible. The Order in Council of 1850, framed in compliance with the recommendations sent from South Australia, divided the Crown lands into two classes, one composed of lands within the hundreds, the other of lands without the hundreds. Leases might be given for fourteen years in the latter, but the land might at any time be reclaimed for sale. Eventually two classes of land were fixed outside of the hundreds. In the original order the rent was made £1 per square mile for land of first quality, fifteen shillings for second quality, and ten shillings for third quality. Subsequently a system of valuation of each run was introduced, and as might have been foreseen there was occasional indignation at the valuation. Mr. Goyder, the Surveyor-General, who was made valuator, was vehemently assailed for gross inaccuracies and unequal and unjust reports.[1] But these were

[1] Mr. Goyder gave some colour to the idea that his self-sufficiency induced blunders. Mr. Hawker addressed a remonstrance to the Colonial Secretary. Goyder had reported 91,000 sheep as depastured on a certain

specific, not generic, vices, if they existed. The valuations themselves were an accrescence to the system, imposed after many years as a compromise when the Government (in need of money) contemplated a special tax upon pastoral tenants. The latter, like the tenants of the Crown under the Plantagenets, after protesting against the exaction as unjust, compounded it by agreeing to an annual charge of twopence a head on each sheep, according to the pastoral capacity of each run, on condition of renewal of their leases (about to expire in a few years) for a further period of five years. By virtue of the Act then passed Mr. Goyder entered on his critical duties.

The conditions upon which Crown lands were occupied in Van Diemen's Land differed widely from those supplied in the almost illimitable pastures of the mainland of Australia. There were local difficulties about issue of grants and collection of quit-rents. These Sir William Denison met by regulations of which Earl Grey approved in July 1848. To ensure their efficacy, all grants under Macquarie and Brisbane, were required to be enrolled; to justify enrolment arrears of quit-rents were to be paid, but a reduced scale was adopted in order to induce grantees to pay the arrears. The leasing of Crown lands had originated in 1828 under Colonel Arthur. In 1829, £1100 were received on lands leased by tender at a minimum rent of £1 for 100 acres. The receipts diminished, and in 1832 auction was substituted for the tender system. The occupants did not bid against one another, and the receipts fell to £60 in 1833. In 1835 the gradual increase of stock raised the receipts to £923. After some fluctuations, the leasing by tender was reverted to in 1843, and the rents, which had been £1083 in 1842, rose to £3267 in 1843. In 1846 they amounted to £5584. There was

run. Hawker declared and could prove that there were never more than 83,639 upon it, including unweaned lambs. He requested that the valuation might not be confirmed. Goyder retorted that he had reported that the "quantity of stock was partially fed upon other lands; consequently this circumstance could have guided me but little in my estimate, which was formed from the character of the country. My information respecting the stock was received from the manager of the run, and if the figures were erroneous it is immaterial, as I was guided by the observations I made whilst going over the run, and not by the stock depastured on several other leases and lands."

still a quantity of land on which animals strayed at large, and for which no rent was paid. In June 1847, Sir W. Denison deprived unauthorized occupation of its fancied security, by increasing the advantages accruing to lawful occupation. He allowed licensees (paying £1 for 100 acres) the privilege of renewing their licenses annually, for ten years, paying only 10 per cent., in addition, during the latter moiety of the period.

The rents rose immediately to more than £10,000 in 1847. The English Government were not ignorant of a radical difference between the circumstances of the convict-burdened island and the mainland. They thought of employing convict labour in preparing waste lands for sale. Sir Eardley Wilmot suggested in 1844 that ticket-of-leave holders might become Crown tenants on small agricultural allotments.

The Lands Sale Act (Lord Stanley's) of 1842 forbade such remedies. In 1845 an Imperial Act was passed (8 and 9 Vict. c. 95), exempting Van Diemen's Land from the operation of the Act of 1842, during the continuance of transportation thither. The Crown became again paramount as in 1803, when Governor King planted the English flag in the island. Mr. Gladstone, in 1846, promised instructions to the Governor, and Earl Grey sent them in July 1847. He transmitted his "Orders in Council" of March 1847, and authorized Sir W. Denison to adopt them if he should think fit to do so. Sir W. Denison did something quite different. He virtually re-enacted his former regulations for leasing lands, and maintained the upset price of £1 an acre for all country lands alienated in fee. Earl Grey accepted the solution proposed by the Governor, and in October 1849 procured Royal Instructions to sanction it. Like the Orders made for South Australia and Western Australia, they differed *toto cœlo* from those forced upon New South Wales and Victoria by the noble Earl. They ordered that the minimum price should be £1 an acre.[1] The price paid for rental of Crown lands in the island was far higher than that extant on the mainland, and various licensees represented the severity of the pressure upon

[1] The repeal of the Land Sales Act as regarded Van Diemen's Land had revived the efficacy of an old Instruction (1837), making the minimum price twelve shillings an acre. That Instruction was revoked in terms by the Instructions of 1849. Parliamentary Papers, vol. xxxvii. p. 189. 1850.

them in 1849, when the wool-market of Europe was unfavourable. Sir W. Denison and his Council declined to make concessions. There were more than seven hundred lessees, and only a few had complained. Earl Grey retained stringent control over the Land Revenue in Van Diemen's Land. He justified it on the ground that large advances had been made by the Imperial Treasury for the service of the island. Although the ability of the Governor was great, his despatches cogent, and his reputation high with Earl Grey (whose schemes in favour of transportation he supported), he could not prevail upon the Earl to forego his claims, but the Lords of the Treasury agreed to allow the amount due to be paid by instalments covering a period of twelve years.

By prudent management the petty revenue derived from Crown lands sufficed to meet the charges upon it, and in 1850 to cover a deficiency of more than £7000 in the general revenue; although the receipts from land sales in that year were only £2268, and from licenses to occupy only £22,800.

Western Australia and its tillage leases presented problems unknown elsewhere. In other colonies the task was to regulate the eager band of occupants. In Western Australia the difficulty was to find pasture lands which would invite occupation. Governor Fitzgerald said that "the loud cry of the colonists that no means should be left untried to find new pasture ground, as a measure of the first and most vital importance, was met by the government of Colonel Irwin with becoming promptitude." On Fitzgerald's arrival in 1848 two expeditions were in a state of preparation. Mr. A. C. Gregory, an assistant surveyor, went northwards with one. Mr. Roe, the Surveyor-General, travelled southwards, and explored to the east of King George's Sound, but farther from the sea than Eyre's track of 1841. During one hundred and forty-nine days he traversed the dreary sands, repellent of pasture, between Cape Geographe, in longitude 115 E., and the Russell Range, more than five hundred miles distant to the eastward. Salt lakes, beds of lakes which had been salt, sand, and thickets were seldom exchanged for patches of pasture. The Fitzgerald Peaks, and the Russell Range, attained with difficulty, rewarded the gallant Roe with water and grass. He reported that the failure to

find "tracts of good land can be regretted only," but could not be charged against the explorers. He had found coal in two places. One was near Middle Mount Barren, and he named the tortuous course of that which might be a river in winter, but was a dry gorge in summer—the Fitzgerald. Even in those days there was a settler at Cape Riche, whose Australian hospitality refreshed the wanderers. Undaunted, the Government sent A. C. Gregory to the north with six men, twelve horses, and three months' provisions. At Champion Bay he found pasture land. Want of water prevented him from going as far as the Gascoigne river, but (5th October, 1848) one of his companions found lead ore on the Murchison river.

On the Bowes river a patch of pasture was discovered, and the Governor himself joyfully accompanied a supplementary expedition to examine the place of good omen, where about 180,000[1] acres of good pasture were thought to be blessed with a proximity of water even in summer. He sailed to Champion Bay with his private secretary, Mr. R. H. Bland,[2] Mr. A. C. Gregory, three soldiers and a servant, who formed the land-service party. He visited the site where lead ore abounded at the Murchison. When leaving the pasture land at the Bowes on his return journey, he found the natives apparently resolved to guard their favoured heritage, whose pastures furnished food for game. More than fifty crowded round the invaders, and the Governor cautiously put bullets into his fowling-piece. His companions awaited his orders to the last, when a native seized Mr. Bland, and seemed about to strike with a club. Then the Governor shot one of the largest natives he had ever seen. A soldier shot another. The travellers availed themselves of the confusion among their assailants, and escaped to some clear

[1] The wonder with which the Western Australians enjoyed the discovery afforded some amusement in New South Wales, where millions of acres invited graziers. "We estimated (Gregory wrote) the valley of the Buller to contain about 10,000 acres of good grassy land, and 30,000 acres of inferior feeding country. The good land is much broken into patches by that which is of indifferent quality." This was the territory for which Earl Grey wished to demand two shillings an acre under tillage leases.

[2] Afterwards a highly respected colonist in Victoria, where he was manager of a prosperous mining company at Clunes which produced millions of sterling value in gold.

ground. Then a shower of spears fell amongst them. One pierced the Governor's leg. For seven miles the natives pursued the retreating party, but were kept at a distance by an occasional shot. Mr. Bland believed that not more than three natives were shot. The Governor sent depositions made by Messrs. Bland and Gregory, and by three soldiers of the 96th Regiment, as to the facts. He deplored the necessity of taking life in self-defence. Mr. Gregory had seen natives on his former expedition to the Bowes, and they had been friendly, except when some of the women pelted the travellers on the Buller river. Gregory was not attacked at any of his camps. On one occasion the natives, "at night, stole our fryingpan to dig a well, but returned it next morning before the theft was discovered."

The Governor, on his return to Perth, was busily engaged with his advisers in drawing up regulations under the Waste Lands Act of 1846. After transmitting them, in July 1849, he despatched a band of settlers to test the lead mines at Champion Bay. With them he sent a strong military guard. He sent also a better protection. J. N. Drummond, Chief Constable, who knew the language and habits of the tribes at Swan River, was entrusted with the delicate task of "preventing collision." Taking a constable and a native, Kardakai, as companions, he advanced towards a party of natives, bent apparently upon preventing the travellers from crossing the Greenough river. Drummond plied his eloquence. There was no desire to injure them. The Governor had sent him to say so. "At first they were inclined to be hostile; but on matters being fully explained, they became quite friendly. Several of them returned with us to our fire."[1] They sent messages to the tribe which had attacked the Governor, and the consequence was that the new-comers received a friendly greeting at the Bowes river. Drummond reported a circumstance which might be held to account for jealousy against intruders there. The "wyr-ang" or native "yam"[2] was so abundant that it was easily procured, and formed the chief article of food in that locality. He reported also that the natives were cannibals. Though Earl Grey had (1849) denounced the expeditions in search of territory, and declared that the occupation of land should be checked rather than extended, and therefore he would sanction no expense inci-

[1] Parliamentary Papers, vol. xxxvii. p. 92. 1850. [2] One of the *Dioscoreæ*.

dental to the expeditions, he was somewhat mollified by the dangers undergone by the Governor, and the prospect of a lead mine. Nevertheless he positively refused to sanction the appointment of a sub-protector of natives at Champion Bay unless it could be paid for out of colonial funds; which he must have known was impossible. He sanctioned the sale of mineral lands by auction without reservation of any royalty, but he disapproved of the despatch of a military guard to Champion Bay. The Governor answered (October 1850):

"So great was the prevalent despondency and depression that the flocks were to a great extent thrown out of increase, and prepared for the cauldron; all classes of colonists were daily leaving as opportunities occurred; and were it not for the hope which the discovery of this new land diffused, my conviction is that every flock-owner in the colony who had it at all in his power would have boiled down his sheep and abandoned the colony for South Australia. I pray your Lordship, therefore, to consider my situation at this trying moment, and the consequences of refusing, in violation of Colonel Irwin's promise, to send a military detachment to protect those enterprising men who, having already purchased the land from the Crown, intended working the mine, as well as at great hazard to move their flocks and herds to the new pastures in this land of promise."

The Earl relented. Lead had done for Western Australia what copper had done for her neighbour on the east. The Crown lands yielded another store. The guano found on an island in Shark Bay, had early brought mercantile houses in London and elsewhere to the scent. The sea yielded tribute to redeem the colonists from debt. Pearl-fishing was found to be remunerative in Shark Bay. There were many despatches about the rate at which guano hunters should be allowed to remove it, and Earl Grey decided that they should pay £1 a ton. Earl Grey called it "a duty on exportation." The common sense of the colonists called it a charge for the appropriation of public property; in fact, a mode of selling it.

In May 1851 the Earl expressed his "sanguine hopes" of advantage accruing to the colony from guano, and in the same month (without consulting the Governor), to encourage pearl-fishing, gave permission to a London firm to dredge for pearl-shells at Shark Bay, without paying duty before July 1852,

when the subject would be re-considered. The 'Inquirer' newspaper at Perth denounced the downright impudence of the Secretary of State. The Governor had, in July 1851, leased the exclusive right of pearl-fishing to another firm, stipulating for a royalty of one-eighth of the yield. The Governor was aghast, but it was discovered that his Advocate-General, who doubted the power of the Government to grant the exclusive right of pearl-fishing, had been right, and it was deemed necessary that a local law should be enacted to impose a license duty. Earl Grey wrote many despatches about guano and about pearls. He insisted that "the right of fishery must remain open to the public," that no duty should be imposed upon it during 1852, and none "afterwards without previously obtaining the express sanction of Her Majesty's Government." He allowed the money received for the sale of guano to fall into the ordinary revenue of the colony.

Intimately bound up with the land question in the Australian colonies was that of immigration. Though not an essential element of Wakefield's colonizing scheme, it was stated by him from the first that the money, having been acquired by insisting on a price calculated to insure sound progress, could not be applied to a more wholesome purpose than that of promoting a healthy immigration. All public men seemed to concur. The difficulty was the finding of money. There was no jealousy against immigrants in any colony. Employers in the rural districts always supplied their servants with food, and the labourer cared not whether the tea and sugar he received had paid duty or not. The masters were the tax-payers. There was so little tenantry that it may be left out of calculation. The dwellers in towns welcomed accessions to the population as promoting general prosperity, and therefore their own. The manner in which the Commissioners in England performed their duties need not be detailed. They were subject to the control of the Government, but they were trusted, and their advice was usually taken. Their duties were multifarious, and minute regulations were made for the management of ships conveying emigrants. Numberless pamphlets of instructions and bulky reports attest the diligence with which they laboured. Immigration departments in the colonies were on the watch to ensure

compliance with the regulations, neglect of which entailed loss to the contractors who despatched the ships. The horrors of mortality amongst emigrants to America in 1847 stirred the nation to vigorous preventive measures. The Passengers Act of 1849 was the charter for the security of emigrants. Assisted immigration supplied a most useful and worthy order of colonists. Employers, or relatives already in a colony, by paying a proportion of the cost of passage, could bring out the persons they designated. These persons were sure of a welcome and a home on arrival. But, as has been seen, there were occasional periods of depression, when immigrants found the labour-market glutted at the port of arrival. The far interior was a blank to the new-comers, and though sorely in need of labourers the squatters, dispersed throughout an enormous space, were unable to make their wants known. There was, moreover, a gregarious instinct which induced immigrants to cling to the towns. Country residents who had active friends in the metropolis were enabled to obtain small bands of hired servants on the occasion of the return homewards of the waggons (or drays as they were called) which had taken the wool to the town and went back loaded with supplies of clothing, flour, sugar, tea, tobacco, and such scanty condiments as were used in remote districts. But there was a want of machinery to do for the immigrants and for the public what the few wealthier or more businesslike persons did for themselves.

Emigration to Australia sustained a check after 1841. In that year more than 32,000 souls arrived, of whom more than 17,000 went to Sydney and nearly 10,000 to Port Phillip. In 1845 the total immigration from the United Kingdom to Australia,[1] including New Zealand, was 830, of whom 423 went to Port Phillip and 300 to South Australia. But in 1845 the last-named colony (reviving from causes already shown) absorbed more than 2000 immigrants from other colonies. So great was her reputation that in 1846 she received from the United Kingdom 2224 out of the 2347 souls who emigrated in that year to the Pacific. Returning prosperity in the Australian

[1] The totals are to be found in Martin's 'Statesman's Year-Book, 1875.' The Land Sales Act of 1842 defined New Zealand as one of the "Australian Colonies."

group raised the immigration to 7622 and 7399 at Sydney and Melbourne respectively in 1848; but South Australia received more than either of them, with large inter-colonial additions. The total immigration to Australia in 1849 rose to upwards of 32,000, as in 1841. Then succeeded a depression caused by the discovery of gold in California. The immigration from the United Kingdom sank to 16,000 in 1850, and still South Australia was the largest recipient.

A worse fortune than this inferiority befell New South Wales. The immigrants she had paid for had cost her more than a million sterling at an estimate of about £18 a head. Many of them sailed to America, tempted by the stories of the gold that might be picked up without working for it. Between the 16th January, 1849, and the 6th April, 1850, more than 3000 persons migrated from the Sydney district to California, and several hundreds similarly abandoned Port Phillip.

Mr. Darvall, a barrister, carried without a division (in August 1850) resolutions affirming, inconsequentially, that the colonial land fund had relieved the distressed people of Great Britain almost gratuitously; that the colonists were entitled to the "administration of their own land fund," and to the introduction of free labourers at Imperial cost equal to that borne by the colonial revenue. Distress seems to destroy the reasoning faculty. No law, no principle recognized the abandonment of the droits of the Crown. No custom had grown up to justify Mr. Darvall's assumption. But there is no such revolutionary disturber as a lawyer when, no longer bound to precedent by the Judicial Bench, or restrained by a brief, he substitutes his own will for law. Dr. Lang was in the House, and spoke and voted for Mr. Darvall's resolutions. It seems inconsistent even with his passion-guided career to find him,[1] less than two years afterwards, declaring "decidedly that Great Britain should on no account surrender the control of the waste lands to any mere provincial Legislature."

During the depression in Sydney in 1841, when drought had decimated the flocks, and insolvency was stalking through the land, an energetic effort was made by Mrs. Caroline Chisholm

[1] 'Freedom and Independence, &c.,' pp. 29, 243, 245. J. D. Lang. London: 1852.

to remedy the distress which arose from the arrival of more than 17,000 immigrants whose passages had been taken before the commercial crisis. Her husband was a Captain in the East Indian army, and had visited Australia on furlough. Returning to India he left his family in Sydney. His busy-minded wife saw the existing distress, and with remarkable tact and firmness did much to alleviate it. She established a Home for female immigrants. She devoted herself personally to its management. She travelled to the country districts with detachments of young women, and her enthusiasm excited dwellers in the interior to assist in making arrangements for the hiring of her wards. She was careful to inquire as to the character of the employers who engaged them. She made light of inconveniences which would have deterred many from her self-imposed task.[1] She won the respect of all, and Sir George Gipps, who had at first doubted whether her efforts would be successful, was amongst those who sung her praises. For several years she worked, and when she went to England in 1846 colonists of various degrees presented her with a subscription and a testimonial. In England she founded a Family Colonization Society, and lectured on behalf of emigration with success, producing grateful letters from prosperous persons whom she had escorted in their poverty to the bush of Australia. The benevolent Earl of Shaftesbury presided over the Society which she created.

Despondent persons predicted speedy decay in Australia. Abandoned flocks and herds would be left to roam at large. There would be no labour for hire, and capital (they said) would quit the land, which would be tenanted only by a miserable race of creatures who had not energy to seek their fortunes elsewhere. But the mass of mankind are not prophetic. They take their daily bread, and have their eyes open only to that which is immediately about them. Affection, family ties, carelessness or indolence, kept the bulk of the people at home, and in 1851 a counter-attraction in Australia brought back many of her own refugees

[1] When she reached the Murrumbidgee at a time when the water had risen a few feet, and the punt could not be made to touch the river-bank, the puntman looked aghast. The lady could not land, he said. "Tut, man," she said, "pick me up and carry me." He did so, with some difficulty, as the burden was not a light one. He told the author a day or two afterwards, with a sigh, "Ah! Sir, she's a bold woman."

amongst the rushing tide of immigration. It is worthy of notice that however eager crowds appear, their movements, when passages have to be paid for and impedimenta provided, seldom reflect their intended haste. Gold was found early in 1851 in New South Wales, and later in the year in Victoria. Yet the immigration from the United Kingdom to Australia in that year followed, as regarded South Australia, the analogy of the five previous years.[1] To South Australia 7048, to Victoria 6212, to New South Wales 4508, to New Zealand 2677, to Van Diemen's Land 800, to Western Australia 287, are the recorded numbers. The excess which appeared in the immigration to Victoria was caused by the attraction of the turbulent freed class in Van Diemen's Land, attached weakly if at all to families, and glad to exchange their former life of robbing fellow-creatures for unforbidden rapine of the soil. The exodus terrified Sir William Denison. In August he reported that if gold should be discovered in the island ordinary employments would be deserted as they had been in New South Wales. He propitiated Earl Grey by adding that in such a case he could "not at all agree in the opinion that convicts should not continue to be sent to the colony." Their labour would be requisite to supply food; and, in spite of temptation to abscond, the convicts could be controlled. In January he wrote in a different strain. The rich gold-fields at Ballarat were occupied under sanction of the Victorian Government in September, and before the 15th January, 1852, 4875 out of a population of about 70,000 were known to have hurried across Bass's Straits. The excite-

[1] IMMIGRATION.

	New South Wales.	New Zealand.	South Aust.	V.D.L. or Tasmania.	Port Phillip or Victoria.	West. Aust.	Total.
1845	73	14	300	20	423	...	830
1846	36	6	2,224	...	81	...	2,347
1847	726	316	3,512	8	387	...	4,949
1848	7,622	751	7,852	218	7,399	62	23,904
1849	8,403	1825	10,855	535	10,562	11	32,191
1850	3,661	2005	5,013	270	4,682	316	15,947
1851	4,508	2677	7,048	800	6,212	287	21,532
1852	12,736	1718	7,552	1417	63,719	739	87,881
1853	10,673	1420	6,883	991	40,469	965	61,581
1854	14,647	1050	11,457	4312	51,291	480	83,237

ment was increasing;[1] the returns gave "a faint idea of the probable emigration." Public works would be stopped. Land would go out of cultivation. Labour would be so scarce that the Governor implored the Earl to appropriate the whole "sum voted by the House of Commons for the promotion of emigration to Australia to the transmission of emigrants to Van Diemen's Land." "To Van Diemen's Land, where I rejoice to say no gold has as yet been found"—"few will be attracted at present." Earl Grey's obstinacy was not put to the test. The Governor's despatch was received by Sir John Pakington, who was about to yield to the demands of Wentworth's Remonstrance—to accord responsible government—to surrender the right of the Crown to revenue derived from Crown lands including the Royal minerals—and to announce that transportation to Van Diemen's Land would be abolished. One advantage the island derived from the exodus of her population. Among the many thousands who speedily followed the pioneers to Victoria were idle and dissolute scapegraces whose absence, when representative institutions were introduced in Van Diemen's Land, was a relief and a blessing there, while their presence was a burden and a curse in Victoria. The great law, that in the long run punishment will follow crime and folly, stepped in to redeem in some degree the afflicted Victoria. The lives of the coarse unthrifty sensualists were not often of long duration, and the great majority of the unreformed convicts passed away in the whirlwind of their own excesses, or in the prostration and disease which their vices induced.

[1] Despatch. Sir W. Denison to Earl Grey. Parliamentary Papers, vol. xxxiv. 1852.

CHAPTER XIII.

CESSATION OF TRANSPORTATION.

BEFORE narrating the discovery of gold in Australia it will be well to dismiss the subject of transportation, inasmuch as the only unqualified blessing which the gold conferred was the summary extinction of transportation to every Australian colony except the feeble and remote settlement at the West. There is a library of literature on the question, but however necessary it may have been to examine minutely the manner in which compulsory labour was wrung from condemned criminals; to show indeed how they were the ungainly weapons with which Pitt called in a new continent to compensate for the territories which his predecessors in office had lost; it will be a relief to turn from the unsavoury subject, after dealing with it as briefly as possible. The reputation of Norfolk Island, which Maconochie's mismanagement had rendered more difficult to control than it had been before, was evil. The worst criminals were gathered there under probation. Thence they were drafted to Van Diemen's Land, and placed in gangs where their industrial and moral progress was watched, and where religious ministrations were afforded to them in accordance with the Instructions of Lord Stanley in 1842. A third condition permitted them to hire for wages, which were doled out systematically. In the first stage they received one-half, in a second they received two-thirds, in a third stage they received the whole of the wages appropriate to their service. A ticket-of-leave afforded further liberty. Except that they were under police inspection they might act as freemen. The final stage was a conditional, or a free, pardon. The latter gave complete enfranchisement. The former conferred the privileges

of a freeman on the convict remaining in the colony. It was hoped that the risk of withdrawal of any probationary advantage would induce the convicts to pass from stage to stage. Major Childs, who superseded Maconochie at Norfolk Island, was unable to maintain discipline, and the worst class of convicts cared not for any temptation to reform. A Commissioner, Mr. Stewart, was sent by Sir Eardley Wilmot to the island. He reported that there was danger of outbreak. Before he returned to Hobart Town he impressed upon the Commandant the necessity for vigilance. Before the Government could act upon Mr. Stewart's report an outbreak took place. The ringleaders[1] had been bushrangers, or convicts who absconded from their masters and became robbers. Several constables were murdered before the military drove the mutineers into submission. Twelve of the convicts suffered death in October 1846 at the island. Mr. John Price, selected by the Government at Hobart Town for the critical post of Commandant, was then on the spot. Capable, determined, fearless, and strong in mind and body, he entered upon his duties with a vigour which cowed the majority of even the desperate crew on the island. His acts were denounced as cruel, and he dismissed the chaplains who denounced him. By the vessel which conveyed the intelligence of the hanging of the mutineers he sent back to Hobart Town a Superintendent, an Assistant-Superintendent, and three overseers whom he had suspended from office. The strong man succeeded in quelling disorder. Meanwhile, Earl Grey, shocked at the horrors reported, determined to break up the establishment, and remove the convicts to Tasman's Peninsula; but intervening delays postponed the abandonment indefinitely.[2] The dwellers in Van Diemen's Land, amongst whom stories of the atrocities of convict bushrangers were rife, shrunk from receiving the hardened criminals of Norfolk Island. A glance at the total transportation will justify their feeling.

[1] One of them, W. Westwood, whose soubriquet was Jacky Jacky, had been an assigned servant in New South Wales. The master was a kind but methodical man, who cared for his servant's moral welfare. Westwood assuredly received no ill-usage from that master. Another was Kavanagh, who had been a bushranger in Van Diemen's Land.

[2] About ten years afterwards the convicts were withdrawn, and Norfolk Island became the home of descendants of the mutineers of the 'Bounty.'

	MALES.	FEMALES.	TOTAL.
To New South Wales from 1788 to 1839 (had been deported.)	51,082	8,706	59,788
To Van Diemen's Land from 1803 to 1853 (had been sent.)	56,042	11,613	67,655
To Western Australia from 1853 to 1868 (were sent.)	9,718	...	9,718
	116,842	20,319	137,161

Nor do the foregoing figures reveal the whole truth; for many of the criminals originally sent to New South Wales had, on reconviction there, been sent to Van Diemen's Land, and they were deemed incorrigible. There was some reason in the plea of those who in 1847 contended that though transportation was an evil in itself, and ought to be averted altogether if possible, yet it was less injurious to receive exiles of unconfirmed villainy than the ruffians who had graduated through all the contaminating stages of gangs till they reached the lowest circle. The elaborate process by which the criminals drafted from Norfolk Island were invited to purify themselves neither attracted them, nor allayed the repugnance of sagacious and patriotic colonists to the system. The honest Latrobe, when he temporarily superseded Sir Eardley Wilmot, wrote to Earl Grey (1847) that "in spite of all the superior arrangements of the system, vice of every description is to be met with on every hand; not as an isolated spot, but as a pervading stain." Earl Grey and his colleagues resolved to continue transportation, but to change the method of it. The settlement projected at Port Curtis having been relinquished, there remained the existing colonies as vile bodies for experiments. Assignment having been abandoned in 1839, penal labour could be enforced only under direct control of the Government. It was thought that after undergoing a term of coercion in the mother country, convicts might be sent as exiles to the colonies, where the ordinary labour-market would absorb them.

Even at Port Phillip,—where association with the convict system had been denounced from the earliest days,—necessities of employers had, after commercial disasters, induced them to accept the questionable services of exiles. In December, 1844, prosperity seemed so little assured, that at a public meeting in

Melbourne it was resolved, though not unanimously: "That in the absence of the ordinary means of obtaining free immigration, and to check the introduction of expiree convicts from Van Diemen's Land, it will be beneficial to the province of Port Phillip to receive exiles." In May 1845, an attempt was made to procure passholders from Van Diemen's Land, but Sir George Gipps deemed their introduction illegal. Subsequently, under Earl Grey's auspices, exiles—who had undergone more or less probation in Pentonville and elsewhere—were received both in Sydney and at Port Phillip, where they were permitted to live in rural districts for terms of not less than one year. In 1847, a petition from Port Phillip to the Legislative Council prayed that, on certain conditions, two thousand exiles might be imported in each of three successive years. Ship after ship arrived with from two to three hundred exiles, and no opposition was made to their introduction.

Earl Grey misunderstood, perhaps, the signs of the time; and by a proposed breach of faith converted passive acquiescence into vehement resistance. He had, in February 1847, formally intimated to Sir W. Denison that it was not the intention of Her Majesty to permit the resumption of transportation "at the expiration of the two years for which it has already been decided that it should be discontinued." But the expansion of his penal system seemed to require more pronounced complicity of the colonies. The selected exiles had been sent out with conditional pardons. When hired they were under no direct control as convicts.

It occurred to the noble Earl or his prompters to modify the system by granting tickets-of-leave, conditional on residence in certain districts. In order to do this it would be needful to send exiles to such places as were, under an Order in Council, open for the reception of transported offenders. He therefore, in 1848, revoked the Order in Council of 1840, which had terminated transportation to New South Wales. Distrust was at once aroused throughout Australia. In February 1849, two hundred exiles had been landed quietly in Melbourne.[1] In

[1] The exiles received from 1844 to 1849 had been more than 1700, and a similar number of freed convicts had arrived from Van Diemen's Land between 1846 and 1849. Earl Grey professed surprise at the reception of

March, while Sir Charles Fitz Roy was on a visit there, the residents, on hearing of Earl Grey's proceedings, publicly protested against them, and sent a deputation to the Governor. He with customary courtesy promised that no convicts should be landed in the district until the desires of the inhabitants had been made known to the Secretary of State.

The outcome of Mr. Gladstone's proposition in 1846 had been, in the first instance, to elicit what Earl Grey called "a remarkable report" from a Committee of the Legislative Council in New South Wales. As has been mentioned previously, it recommended (1847) acceptance of the proposal, with conditions, one of which was "importation of free immigrants" at the cost of the mother country, and in numbers equal to that of the convicts. The latter were to be young delinquents, or those unhardened in crime.

In his work on 'Colonial Policy,' Earl Grey cited with distinction the name of Mr. Robert Lowe as committed to the report. But long before that work appeared Mr. Lowe, with Mr. Charles Cowper, had thrown himself into pronounced opposition to his former advice. In 1849 he was fighting against his opinions of 1847. It is allowable for men to change their minds, but it is suspicious when a change of mind is made a stepping-stone to an object of ambition.[1]

A man[2] lauded as a philosopher had furnished abstract reasons for maintaining transportation. Mr. Charles Darwin had visited Australia (as naturalist on board of H.M.S. 'Beagle' in 1832), and his verdict was that—

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his proposals in the colonies, and "surprise and alarm" when his colleague Lord John Russell assisted in demolishing the plans which Earl Grey had concocted with ministerial sanction.

[1] Mr. Cowper on another occasion so candidly explained a change of opinion that it is perhaps doubtful whether his moral vision was free from obliquity. "I have been charged (he said on the hustings) with having changed my opinions. Well, gentlemen, when I found my constituents did not agree with me, was it not time for me to change my opinions?"

[2] It is amusing to hear people speak of the theory of evolution as modern. Two centuries ago, Sir Isaac Newton, in his 'Principia,' wrote: "The world did not arise out of a fortuitous concourse of atoms as the Epicureans asserted . . . nor by the spontaneous energy and evolution of self-developing powers as some have affirmed . . . but it was created by One Almighty, Eternal, Wise, and Good Being,—God."

"On the whole as a plan of punishment (transportation) has failed; as a real system of reform it has failed, as perhaps would every other plan; but as a means of making men outwardly honest; of converting vagabonds most useless in one country into active citizens of another, and thus giving birth to a new and splendid country, a grand centre of civilization, it has succeeded to a degree perhaps unparalleled in history."

No protoplasm, however foul, could, in the eyes of a preacher of evolution, fail to produce a perfect posterity. But the name of Darwin was in no honour in New South Wales. Many causes combined to make the colonists reject his theory of development of communities. The religious and the moral shrunk from the taint of imported crime. They were to be found amongst high and low; for it is alike a libel on Christianity and on mankind to affirm that its blessings are not shed upon and received by the poor in as large a measure as by the rich. The best elements of society, from foundation to summit, were hostile to Earl Grey's plans.

There was a new cause of opposition. There were large numbers of free labourers scattered throughout the colonies. They were, independently of higher considerations, arrayed against the importation of any labour which tended to lower the market for their own. There were political traders who, like Dr. Lang and Mr. Lowe as well as Mr. Cowper, courted every opportunity of popularity, and trimmed their sails to the prevailing breeze. The event could not be doubtful. Earl Grey, moreover, wrote (1848) that the condition of sending out emigrants as numerous as the convicts could not be borne by the Exchequer. He was bold enough to affirm, afterwards, that "the omission to send out the free immigrants stipulated for had not really much to do with the storm of popular indignation which was raised against the renewal of transportation."[1] But his assertion showed how little he knew of human nature, or how much he undervalued the meaning of the word "stipulation."

When he explained, in September 1847, that the Government could not accede to the wide propositions of the Committee of the Legislative Council in Sydney, mainly because they would not consent to revive assignment of convicts or to burden the Imperial Exchequer with two-thirds of the cost of police, gaols,

[1] Earl Grey's 'Colonial Policy,' &c., vol. ii. p. 47.

and administration of criminal justice in the colony, he suggested that convicts having undergone probation in the United Kingdom might be transported and receive tickets-of-leave in the colonies. He would in such case endeavour to obtain a Parliamentary grant to defray the cost of free emigration equal in quantity to that of the convicts. With this proposition the Legislative Council (1848) was willing to concur. Earl Grey at once sent the convicts without asking Parliament for a vote in aid of the free emigration. He made a windy defence of his conduct. Being unable to send out convicts and free labourers as proposed, he had to determine whether "to abstain from sending either the one or the other." He elected to send the convicts, with an explanation to Sir Charles Fitz Roy, and a promise that no more convicts would be sent if the colony should object to them. It did not seem to occur to him that his tortuous conduct would engender distrust of his word. He perhaps hoped that the temptation of a supply of labour would dim the sight of the colonists. He obtained the Queen's assent to an Order in Council extending the range within which convicts could be lawfully transported. The Cape of Good Hope was included.

His measures lashed the colonial mind into fury which raged from Africa to Australia. He endeavoured to qualify his despatch (of Feb. 1847) which announced that transportation to Van Diemen's Land would not be resumed. The expression might have been an "unguarded one," but it was "meant to apply only to transportation on the former system." It was true that Sir W. Denison—

"from misapprehending his instructions was induced to declare in terms much more positive than those instructions were intended to warrant, the determination of the Government not to send any more convicts to Van Diemen's Land. This, however, was an error which could not commit the Government, even if the words used by Sir William Denison had been much stronger than they were."

With such a specimen of morality in high place in the mother country, the colonists were in no humour to receive convicts whom she was too virtuous to retain. There was but one colony which in its dire need of labour responded to Earl Grey's offer.

Western Australia (as has been seen), after previous refusals, yielded to temptation at a time when the majority of the colonists thought they had no alternative, except by gathering together the ruins on their hearths, and quitting for ever an ungrateful soil.

Earl Grey freighted the 'Neptune' with convicts sent from Bermuda to the Cape of Good Hope. He thought the "generous assistance" recently afforded to that colony, in a Kaffir war, justified him in expecting that regard would be shown to him in his need to be "relieved from a difficulty of a very serious kind" in disposing of some Irish convicts. But when the 'Neptune' arrived in Simon's Bay the colonists besought the Governor to send her away. Declining to do so, he agreed to prevent the landing of the convicts without further commands from England. He did not conceal his sympathy with the colonists. But they were not appeased. They banded themselves together. They held the largest public meeting ever seen at Cape Town. They resolved to have no intercourse with the Government, and to deal with no one who would furnish it with supplies of any kind. Not even to the Admiralty would they afford the most petty assistance until the foul convict ship should have departed with her Irish load. They sent an urgent petition to the Queen. They resolved at a public meeting "that the British Government has no right to degrade into a penal settlement the Cape of Good Hope, which became a portion of the British Empire by capitulation and cession from a friendly power, and that all attempts so to injure and degrade it are unjust and tyrannical, and may be constitutionally resisted by the inhabitants as British subjects." They were so terribly in earnest that with almost a solitary exception the Government could procure nothing for its commissariat. Their cause was taken up in Parliament by Lord Stanley, and by Mr. (afterwards Sir C.) Adderley. On the 13th March Mr. Hawes told the latter that he had no official knowledge of the dissatisfaction said to exist at the Cape. Afterwards, in reply to Lord Stanley, Earl Grey admitted (19th March) that he had received a memorial.

On the 27th Mr. Adderley presented a petition from New Zealand, and called attention to the whole subject. He denounced the shabby manner in which Earl Grey, while resolving

to send convicts to New South Wales, had eluded the stipulation for an equal number of free immigrants. He moved an address to the Queen, praying that the Cape might be left unpolluted by transportation of convicts, "whether as prisoners, free exiles, or holders of tickets-of-leave." Sir George Grey, the Home Secretary, pleaded at great length for his absent colleague that he did "not persevere in sending the convicts out after remonstrances had been received,"—as though it were a merit to desist from trespass after detection. Mr. Hume, Major Blackall, Mr. Aglionby, Mr. Francis Scott, and Lord John Russell, joined in the discussion. The latter agreed that it would "not be advisable or right to persist against the adverse feelings of the Cape colonists. Mr. Disraeli, after such an admission from the Prime Minister, counselled the withdrawal of the motion. Mr. Adderley withdrew it, and the Cape Colony was saved from the untender mercies of the Whigs by the resolution of her people and the sympathy of the Conservatives.

Earl Grey on the 18th April informed the Governor that no more convicts would be sent, but it was not until November that he learned that the colonists were not inclined to allow his first cargo of criminals to set foot on African soil. He then (30th November) condescended to lament that he had, without waiting for an answer to his circular despatch, directed the shipping of the 'Neptune's' convicts.

"Had I been aware how strong was the feeling which existed at the Cape on this subject I should not have advised the measure." . . . "I received this intelligence with much regret, believing, as I still believe, that in refusing to receive in very moderate numbers convicts . . . the inhabitants of the Cape were declining the share of the common burdens of the Empire which they might fairly be called upon to undertake."

Still he had thought that Sir Harry Smith would have been able to "adopt some course or other for the immediate relief of the unfortunate men" cooped up in the 'Neptune.'

Nothing having been done for them at the Cape they would be sent to Van Diemen's Land, and Her Majesty would be "advised immediately to revoke the Order in Council by which the sending of convicts to the Cape is rendered legal. I forbear

to express my opinion on the extraordinary proceedings of the inhabitants at the Cape, or upon your own conduct; on the former, because I am unwilling to use the terms which would alone adequately describe what I think of their proceeding;" on the latter, because Sir Harry Smith's explanation of his conduct in an undoubtedly difficult crisis had not been received.

Van Diemen's Land was still open by law to convicts. Earl Grey's announcement (February, 1847) that transportation would not be resumed "after the expiration of the two years for which it has already been decided that it should be discontinued,"—Earl Grey was determined to explain away; and he was vain enough to think that he could disabuse other men's minds of the meaning which his original words had conveyed.

The 'Neptune' sailed from the Cape. The inhabitants contributed money to be given to the convicts on their arrival in Van Diemen's Land, and held high festival to commemorate their African triumph.

Meanwhile Earl Grey's ill-advised step of sending convicts without the stipulated consignments of free persons had roused the people in Sydney. The adoption (1847) of Cowper's motion rejecting any renewal of transportation deprived Earl Grey of any feeble support he could have hoped for if the Transportation Report of 1846 (never adopted) had been left uncondemned. That the report should be condemned on the spot as vicious in principle, and that Earl Grey should pick from its propositions such as he might approve, was felt to be intolerable. The Order in Council (September 1848) extending the area of transportation evoked vigorous opposition. The explanation of Earl Grey's reasons for sending convicts without any assurance that a Parliamentary grant would enable him to send the free immigrants stipulated for, satisfied nobody.

In February 1849 a public meeting was held, and Cowper, Lowe, and others were the genii of the storm. "Transportation in any shape" was condemned in Sydney and at country meetings, as well as in the Legislative Council (where Mr. Cowper, in June 1849, carried an address praying for the revocation of the Order in Council). Melbourne as usual was demonstrative.

While these events were occurring the 'Hashemy' arrived in Port Jackson with convicts on board. On the 11th June a

public meeting was held near the Circular Quay (not far from the sight of the original Government House) to protest against transportation. Mr. Lowe triumphantly wielded a majority ready to roar in applause of his most pungent sarcasms.[1] It was proposed to march tumultuously to Government House to over-awe the Governor. He consented to receive a limited number as a deputation from the meeting, and he was taunted because one or two men were added to the small guard stationed at the entrance to the grounds. But neither Mr. Lowe nor others believed in these taunts; nor, resolute as the community was on the transportation question, was there any general approval of the coarse language with which Sir Charles Fitz Roy was assailed. The convicts were hired on board. None were allowed to be employed in the metropolitan county (Cumberland), and they were removed at the expense of their employers to the country districts, with the exception of a few sent to Moreton Bay by sea. Thither also the convicts who arrived subsequently were sent.

Sir Charles Fitz Roy in narrating these events betrayed no alarm, and even spoke disparagingly of the assemblage at the Circular Quay, amongst whom were many idlers.[2] He had visited Port Phillip in March 1849, and had promised a deputation that no convicts should be landed there without further instructions. Cowper, to cause as much inconvenience as possible, strove to carry an address requesting the Governor not to permit convicts shipped for Port Phillip to be forwarded to Sydney; but on a division Cowper was defeated (May 1849). The majority were not so unreasonable as to leave the Governor no course which he could with honour or loyalty adopt.

In August 1849, the ship 'Randolph' arrived at the entrance to Port Phillip Bay, and the master was met by instructions to proceed to Sydney. He declared that his ship was insured to Melbourne, and thither he would go. He anchored her in

[1] He was not then an old man, but his hair was always snowy white. An old woman in the crowd was heard to say, as the orator savagely assailed Sir C. Fitz Roy, "Ah! bless his dear old white head!"

[2] When his despatch became known another meeting was held in 1850 to denounce it, and to pray for his removal.

Hobson's Bay; there was intense excitement at Melbourne. The promise of Sir Charles Fitz Roy, that no convicts should be landed there without further orders, was appealed to. Physical force was threatened; but it was probably the kind heart rather than the fears of Mr. Latrobe which induced him to insist that the 'Randolph' should proceed to Sydney. The Town Council of Melbourne thanked him for the sending away of the convict-ship. There was afterwards a great meeting in Melbourne. Earl Grey's Order in Council, of 1848, was denounced; Port Phillip was declared to have been never really a portion of a penal colony (although it had been a known portion of New South Wales, from the time when Robbins took formal possession of it, and trod the site of Melbourne, in 1803); and it was resolved to band with the Cape of Good Hope, or any other colony, in resisting the tyranny which would thrust convicts upon them, in defiance of good faith. Throughout 1849 and 1850, the inhabitants of Port Phillip maintained the same attitude. Coinciding in point of time with the prayer of the Legislative Council, that the Order in Council might be revoked, the public demonstrations of New South Wales may be termed unanimous against any resumption of transportation of felons to her shores.[1]

As long as he could, Earl Grey kept the Order in Council in force with regard to New South Wales, justifying himself on the ground that "the judgment of the (Colonial) Legislature had varied at different times, and the opinions of the country were known to be divided." In 1850, the country declared its opinion with no uncertain sound. Eight petitions, signed in the aggregate by 525 persons, supported a modified continuance of transportation. Forty petitions, signed by 36,589 persons in

[1] There were many persons who objected to the coarse vituperation with which Sir C. Fitz Roy was assailed, and some thousands of them signed addresses testifying confidence in him. His equanimity galled his assailants. He had told Earl Grey that until the Order in Council might be revoked the colony was liable to be disturbed by designing and disaffected persons whose object, under the "pretext of agitating the question of transportation, is to instil sentiments of disloyalty in the minds of the lower orders of the community, and to render them discontented with the government of the mother country." The League repelled the imputation. In forwarding their protest to England he said, that as he believed the "reasonable portion of the community" generally agreed with him, he had "not considered it necessary" to discuss the subject with the League.

the Sydney district, prayed for its total abolition. On the 1st October 1850, after much discussion, the Legislative Council resolved, on the motion of Mr. Lamb (then an unofficial nominee member) . . "That this Council adopts as its final conclusion that no more convicts ought under any conditions to be sent to any part of this colony." The revocation of the Order in Council was earnestly prayed for as the only means of securing "social and political tranquillity."[1]

Earl Grey, in April 1851, yielded ungracefully. The address of the Council might be "considered a final expression of the opinion of that body as at present constituted;" but there might be a change after separation of Port Phillip (then imminent); or in the North "a further division of the colony for the sake of obtaining the assistance of convict labour with that of free immigrants, who would in that case be sent out to them by means of the grant made by Parliament (he had obtained a vote in 1849) for free emigration to the colonies which receive convicts," might make it proper to issue a new Order. Meantime, that of 1848 would be revoked. The significance of Earl Grey's insinuations was speedily annihilated. He lost office in February 1852, when Lord Palmerston defeated Lord J. Russell by an amendment on a Militia Bill, and Sir John Pakington became Colonial Secretary under Lord Derby. The views of the new Ministry have been seen already in the despatch in which Sir John Pakington dealt with the subjects of

[1] It is not worth while to encumber these pages with the amendments rejected. Mr. James Macarthur, while solemnly protesting against any system which would subject the colonies to "the influx of dangerous and irreclaimable criminals," and of opinion that the "best interests of the whole group of colonies would be promoted by cessation of transportation to any portion of them," was willing to receive exiles with a corresponding supply of free immigrants rather than to see a new convict colony made at the North by the dismemberment of New South Wales. Such dismemberment would, he contended, be a breach of faith; for the colonists had been told that transportation would not be continued against their will; but if a portion of the colony should be severed from it and convicts sent thither, the promise would be broken. Neither Mr. Macarthur's nor other amendments were accepted. The House had determined to cut the knot, and leave no room for further cavil, although Mr. Lamb himself voted for the insertion of words proposed by Mr. Parker (another nominee member) to protest against the dismemberment of the colony with a view to form a Northern convict colony.

constitutional changes, and of the droits of the Crown. The impress of the same mind may be seen in the treatment of transportation, and the novel questions arising from the discovery of gold. That discovery had been made in 1851, before Earl Grey's dark insinuations about convicts to be sent to the North were made known in New South Wales. There was then no risk of renewal of transportation. If there were a few persons looking wistfully for it they were silenced by the growl of Wentworth, who declared that the subject of transportation was settled for ever by the discovery which had precipitated the colony into a nation.

Nevertheless Earl Grey's evil reputation tainted the air, and in all the colonies there was a determination to put it out of the power of any Secretary of State to do what Earl Grey had hinted at. In Western Australia the Earl at once availed himself of the pliability of the needy settlers, and prisoners were received there in 1850. In Van Diemen's Land the inhabitants could not even hope for immediate cessation of the evils entailed by convicts. They had, however, that promise of Earl Grey, which he endeavoured to explain away, and it afforded foothold on which to wrestle for the total abolition of transportation. What would have been the result if Earl Grey had remained in office, and could have influenced his colleagues, must be matter of conjecture. In his book on Lord John Russell's Administration, he asserted, in 1852, that "Van Diemen's Land was founded for the express purpose of receiving convicts," and that for the free inhabitants to "prefer a claim to have the sending of convicts to the island discontinued just when it has been brought into the condition in which it is best suited for receiving them, seems to me to be a pretension which is altogether unreasonable." The demand of the other colonies for its discontinuance was equally untenable, and he maintained that England was "perfectly justified in continuing the practice of transportation to Australia." Every lover of the colonies owed a debt of gratitude to Lord Palmerston for winging the shaft which ended the ministerial career of the pragmatic Earl.

A few words yet remain to be said about Van Diemen's Land, where Sir W. Denison had to carry out his instructions,

and was not always scrupulous in his methods, as his attempted violation of the sanctity of the Chief Justice's position had shown. Petition after petition was sent to England, year by year, before the retirement of Earl Grey.

When the 'Neptune' (after dismissal from Africa) arrived at Hobart Town, in April 1850, the Governor pardoned all the convicts except John Mitchell, one of the enthusiasts of the Irish rebel party. Smith O'Brien, Meagher, McManus, and O'Donohue, had arrived at Hobart Town in 1849. Each of them had a separate cabin on the voyage, and they wore ordinary dresses. Sir W. Denison offered them freedom in the island if they would undertake in writing to accept a ticket-of-leave on such terms. O'Brien and McManus were honest enough to refuse.[1] The former made an attempt to escape, in 1850, to a schooner prepared to carry him to California. When he was about to enter a boat, a convict constable appeared with a musket, the boatmen landed, O'Brien was taken from the boat which the constable scuttled, O'Brien refused to walk, the boatmen who were to have rescued him were made to carry him back to durance; and after a few weeks the blundering prisoner, who had a sense of honour, consented to give his parole, and received a ticket-of-leave, which enabled him to leave Port Arthur, and live at ease in the island. Though Meagher and Mitchell discreditably escaped, O'Brien kept his word, and in 1854 received a pardon from England. The leniency which the Governor had been instructed and had endeavoured to display to the seditious Irish convicts of 1848, made their control, a compromise between law and kindness, difficult to maintain, and Sir W. Denison's relief must have been almost as complete as O'Brien's when the latter was pardoned.

Sir W. Denison was not wanting in firmness. He confiden-

[1] It may be well to relate how one or two of them escaped. Meagher wrote that he resigned his parole, and decamped before the authorities could take steps to prevent his escape. Mitchell, conscious that his act was a breach of parole, strove to obscure it by riding up to an astonished officer in the country and announcing while he turned on his heel that he terminated the arrangement. By swift riding to a place previously agreed upon with accomplices he succeeded in escaping. In 1875 he returned to Ireland, was elected member for Tipperary, and was barred from taking the seat because his felony had not been pardoned or purged. He died in March 1875.

tially comforted Earl Grey when an Australian league was formed to war against transportation. "I can testify (June 1851) to the fact that in Van Diemen's Land not only has no opposition been made to the landing of the convicts, but a most marked anxiety has been shown to benefit by their services."[1] The reports which "created alarm lest the result of the movement should show itself in some decided step such as was allowed at the Cape" were exaggerations. "The convict system is working well at present in every way, and I hope will be allowed a fair trial." He was sure that the gold discovery, the dearth of agricultural labour, and concomitant circumstances, would make it necessary to maintain transportation. New South Wales was deeply interested in its maintenance, for without supplies of food from Van Diemen's Land her "population must be reduced to great distress from actual want of food." The Governor's firmness did not increase his unpopularity. Known to be moral and religious, he was respected by those who strenuously laboured against his policy. But he undervalued the importance of the anti-transportation league, which bound together the Australian group. Earl Grey's crudescence furnished them with motives for union. In 1850, when taunted with breach of promise, he declared in Parliament that Van Diemen's Land had been originally formed as a penal settlement, and had no right to refuse to receive any number of convicts the Government might choose to send thither.

The arrival of the 'Neptune' had elicited a solemn protest "against the cruelty and falsehood of the Government, against the wrongs which threaten and oppress ourselves and our children." This was signed by many leading colonists. The shafts aimed at transportation galled some of its former victims,

[1] 'Varieties of Vice-regal Life.' Sir W. Denison. Vol. i. p. 160. London: 1870. Sir William was too willing a witness. In a despatch (August 1851) he said, "the more I see of these (Van Diemen's Land) inhabitants, and the more accurate knowledge I obtain of the character of those who occupy the continent of Australia, the more convinced I am that we occupy relatively to them a very high station." (Parliamentary Papers, vol. xli. 1852.) It cannot be said that this mis-statement inveigled Earl Grey, who was an old offender on the subject. But it is a melancholy instance of the perversity of men. He was candid enough to admit that a decision "by numbers" would be against transportation (July 1851).

and a number of the emancipists, as if imbued with Governor Macquarie's spirit, sought to form an Association to protect themselves. They would put down the calumnious press, send emancipists to the Legislature (then about to be created), and assert the majesty of numbers against their free immigrant oppressors. Mr. T. G. Gregson, one of the leaders of the popular party, was amongst the most successful in nipping in the bud this unwholesome parasite upon the tree of colonization. Launceston had the honour of planting the seed of an organization, which was, with the aid of the gold discovery and of Lord Derby's Ministry, to thrust away imported convicts for ever from the associated colonies.

In August 1850 the Launceston Association for promoting the cessation of transportation to Van Diemen's Land invited the co-operation of the various officials, and legislative and municipal authorities in the Australasian colonies. The Rev. John West, a Wesleyan minister, was deputed to urge upon fellow-colonists in Hobart Town the views of his Launceston companions. Messrs. R. Pitcairn, T. D. Chapman, Henry Hopkins, G. C. Clarke, J. Allport, John West, F. Haller, G. W. Walker, William Rout, Henry Smith, P. T. Smith, and Dr. Robert Officer, pledged themselves to use all lawful means to procure the abolition of transportation to the Australian colonies. The Launceston Association then convened a conference of delegates from each colony at Melbourne in January 1851. The Rev. J. West and Mr. W. P. Weston were the delegates from Hobart Town and Launceston. New South Wales and South Australia expressed sympathy, but could not send delegates at the time.

The Launceston champions were warmly received by an Association in Melbourne. The Mayor, William Nicholson; Westgarth, a member of the Legislature then existing in Sydney; Mr. Stawell, who was to be the first Attorney-General under the separate government of Victoria; were prominent as welcomers. After previous consultations a public meeting was convened, and on the 1st February, 1851, the Australasian League and solemn engagement was formed. Its preamble recited the breach of faith whereby, after Sir W. Denison announced on Earl Grey's authority, in 1847, that transportation would cease,

"divers and repeated attempts had been made to depart from the letter and spirit of these promises." The delegates pledged themselves to employ no person arriving after the 1st February, 1851, under sentence; to use all their powers to abolish transportation, and to support with money and countenance all who might "suffer in the lawful promotion" of the cause. Subscriptions were poured in. Nicholson, the Mayor; Westgarth; W. M. Bell; Heape and Grice; D. S. Campbell and Co.; J. Graham; Dalgety, Gore and Co., and many other merchants subscribed a hundred guineas each. Henry Moor, a solicitor; W. F. Stawell, the barrister, did the same. Cattle salesmen, brewers, grocers, editors of newspapers were equally eager. Smaller sums were given by men of smaller means. J. P. Fawkner gave £25; and Edward Dryden (Fawkner's neighbour near Mount Macedon, during his brief career as a squatter at Moonejettee), gave the same amount. Men of all classes were alike enthusiastic.

A Council of nine was elected to manage affairs. William Nicholson, the Mayor, was president, and W. Westgarth, W. Kerr, Dalmahoy Campbell, W. F. Stawell, G. Annand, W. M. Bell, J. S. Johnston, and J. Hood, were his coadjutors. A banner procured by general subscription was presented to Van Diemen's Land, and the delegates returning thither delivered it at a public meeting to the popular Richard Dry, one of "the patriotic six" of olden time. The Town Clerk of Melbourne, Mr. J. C. King, was sent to England to labour in the good cause. H. Moor and W. Westgarth, members of the Legislature, were entrusted with a mission in its favour to Sydney. Dr. Thomson of Geelong was their associate. In March 1851 the delegates from Van Diemen's Land, being sent to Sydney, were welcomed by Mr. Charles Cowper and hosts of friends. Nature and time warred with them. Gold had been discovered at Bathurst, and no friend of transportation was left in the land. The delegates were entertained at a banquet held in a spacious wool-store, the property of one of the most estimable, intelligent, and enterprising of the inhabitants, Mr. Mort. It was resolved on his motion, at a public meeting in the Barrack Square,[1] to break up

[1] The old Barrack Square comprised the present Wynyard Square and much more adjacent land.

the Association formed in 1850 in New South Wales, and to join the general League.

Dr. Lang thought he saw an opportunity to embitter strife, and enable him to ride upon a storm of his own creation. Borrowing such phrases as suited him from the declaration adopted in Melbourne, the irreverent demagogue proposed to add that if it should be necessary "to have recourse to the last remedy of the oppressed" . . we appeal "to God and the world as to whether we shall not have indefeasible right and eternal justice on our side." But the delegates from afar did not care to play into the hands of Lang. They deprecated his proposition. Many of the leading colonists supported them in advocating moral force. Lamb, member for Sydney, joined them; and though it was feared that a popular vote might encourage Lang, he, finding that West and other delegates would enter upon no unconstitutional course, was induced to abandon his proposition rather than drive away the authentic guides of the movement.

The League was joined with acclamation. Charles Cowper, Robert Campbell, and Gilbert were made delegates to the League, and Charles Cowper was made its first President. Mr. Robert Lowe, although he had, with Cowper, supported the introduction of convicts a few years before, was, with Mr. Archibald Michie and Mr. Charles Adderley, appointed delegate in London. Lord Ashley, Sir W. Molesworth, and Mr. Ewart were similarly appointed on behalf of Victoria; while Messrs. J. A. and W. Jackson and Mr. C. McLachlan were to officiate for Van Diemen's Land. A long petition to the Queen arraigned Earl Grey: an address to the inhabitants of the United Kingdom invited their sympathy.

In the short session of the Legislative Council which passed the formal enactments necessary to effect the separation of Port Phillip,[1] neither Dr. Lang nor Messrs. Lamb and Westgarth raised the question. Wentworth's Remonstrance was the only constitutional subject dealt with besides the constitutional measures submitted by the Government, and the session was at an end a few days before the discovery of gold near Bathurst heralded a new era, in which no man could be thought so mad as

[1] It opened 28th March, and was closed on the 2nd May, 1851.

to desire to land convicts on the soil. But if not mad, Earl Grey was obstinate, and the League was called upon to guard against his design to create a colony near Moreton Bay for the reception of criminals.

In July 1851 it procured the adoption of a petition representing that Earl Grey's "subterfuges, evasions, equivocations, and breaches of faith" had "unhappily destroyed all confidence in his administration of colonial affairs." In April 1852 it lent its weight to aid in striking off the chains of Van Diemen's Land. Earl Grey's downfall was unknown at the time, and Mr. Parkes and others denounced "the tyrannical Minister," whom not even the election of anti-transportation members to the new Council in Van Diemen's Land had convinced of his errors. Mr. Parkes had at that time been drawn so closely to Dr. Lang that he pronounced in favour of physical force. He professed loyalty to the Queen, but added that if the League had called upon him to fight instead of to speak, he would as freely have consented.

Mr. Cowper was deputed to comfort the distresed islanders at a conference in Hobart Town. The Rev. Mr. West eloquently harangued a public meeting in South Australia, where a branch was added to the League—Mr. John Morphett being its President. He was also the Speaker of the Legislative Council. Another meeting was held in Sydney in June 1852, at which the fall of Earl Grey was hailed as a matter of congratulation to the colonists and to the Queen. Mr. Parkes, lamenting that the drain of population from Van Diemen's Land to the gold-fields had deprived her of the means of fighting, moved a resolution denouncing transportation as "incompatible with the permanence of British rule in Australasia," and averring that if the alternative should be forced upon the colonists of "choosing between British connection *in name* and an unsullied British character *in fact*," the latter would, before long, be preferred "at any sacrifice." Neither such a resolution, however, nor the address which embodied it for the Queen's notice, and which was signed ostentatiously by Charles Cowper, as President of the Australasian League, and chairman, swept away a system which was loathsome to many and grievous to all. Common sense revolted from pouring

criminals upon a soil teeming with gold. Humanity recoiled from flooding the homes of the honest with the offscourings of English gaols. When Earl Grey fell the question was decided. Not Conservative policy but English fair-play guided Lord Derby to its solution.

The speech from the Throne on the 11th November, 1852, declared that Her Majesty would rejoice if Parliament should find it "possible to devise means by which, without giving encouragement to crime, transportation to Van Diemen's Land may at no distant period be altogether discontinued." The two Houses affirmed that they also would rejoice in such a consummation, and though the Ministry of Lord Derby fell in December 1852, Sir John Pakington had already redeemed its promises to the colonies. In June 1852, he had transferred the gold revenues to the Colonial Legislatures, in order to enable them to cope with the unexampled difficulties arising from the gold discoveries. He received the address of the Sydney Council, embodying Wentworth's Constitutional Remonstrance, on the 16th June, 1852. It was a reiteration of the Remonstrance which, when passed by a previous House, had been wordily controverted by Earl Grey on the 23rd January, 1852. Acknowledging courteously its receipt in the first instance, Sir John dealt with it exhaustively in his despatch of the 15th December, 1852. The control of Crown lands and the land fund were handed over to the colonies. The provision of an adequate Civil List was confided to the good faith of the colonists. Transportation to Van Diemen's Land was to be abolished at the earliest date compatible with arrangements for closing a system "so long in operation." The last ship which carried convicts to the island, the 'St. Vincent,' was despatched on the 31st December, 1852.[1] The faith thus pledged in the name of Her Majesty could hardly have been broken even if Earl Grey had returned to power. But happily he was relegated to retirement, and the Duke of Newcastle (in Lord Aberdeen's Ministry) adhered to the pledges given by Sir John Pakington.

It is needless to recount at length the manner in which the wounded system died a lingering death, while the miserable

[1] Duke of Newcastle to Sir W. Denison, 3rd May, 1854, Parliamentary Papers, vol. liv. 1854.

creatures which were its object,—in prisons; in islands; in Tasman's Peninsula; at the gold-fields; and in debauchery,—consumed their worse than wasted lives. Sir W. Denison sent back one person transported in 1851 to Van Diemen's Land from New Zealand. (There were regulations (Earl Grey's) in force to prevent aboriginal Australian convicts from communicating with European prisoners at Western Australia.) Sir George Grey sent Te Ahuru to Hobart Town, and Sir W. Denison sent him back, because he could not treat him in the manner enjoined. Sir John Pakington approved of the act, and took measures to discontinue the transportation of white offenders from New Zealand to Van Diemen's Land. Thus by a technical interpretation of a regulation aimed at a different purpose, it became impossible to transport a New Zealand Hofer to be herded with burglars and petty larcenists.

Van Diemen's Land had more than twenty thousand convicts to deal with on the 31st December, 1851, and more than a thousand of them were hardened and re-convicted offenders in durance at Norfolk Island and at Port Arthur.

Mr. J. S. Hampton, of unsavoury memory with regard to Sir Eardley Wilmot's ill-treatment, was Comptroller-General, and enjoyed the favour of the Governor and of Earl Grey, who, to do him justice, strove to promote those who abetted his policy. There was a clerk in the Convict Department in Sydney, who supported transportation in letters which were sent to the Earl. The grateful nobleman urged upon public men in another colony the propriety of finding lucrative employment for his clerical patron, and a pliant Colonial Minister complied. There was some fitness in the promotion and career of Hampton. As convicts decreased in number in Van Diemen's Land, and the odour of his occupation became fainter in the island, whose name had been changed to Tasmania (partly to obliterate the byeword—Vandemonian—which had long been attached to the dwellers in the convict home), Mr. Hampton found a congenial post as Governor of Western Australia in 1862. There he remained until transportation to that colony was discontinued in 1868. The cessation of transportation to Van Diemen's Land

was formally announced in 1853,[1] and the inhabitants held high festival on the 10th August. The popular speaker, Mr. Richard Dry, requested the Governor to proclaim a public holiday on the occasion. Sir W. Denison declined to do so, on the plea that it was unadvisable to enhance the antagonism of class against class. But the holiday was voluntary and general. A formal Order in Council on the 29th December, 1853, finally repealed all former Orders constituting Van Diemen's Land and Norfolk Island penal settlements, and on the 6th April, 1854, the Australasian Anti-Transportation League was dissolved.

On the 23rd October, 1854, the Legislative Council in Hobart Town prayed that the island might be called Tasmania. Her Majesty had issued Letters Patent creating an Episcopal See of Tasmania, and the name was preferred by the colonists. The prayer was supported by Sir W. Denison,[2] and Her Majesty's consent was at once accorded and made known.

On the 21st July, 1855, by Order in Council at Osborne House, Isle of Wight, the Queen commanded that "on and after the 1st day of January next, the said colony of Van Diemen's Land, and the territory thereto belonging, shall be called and known by the name of Tasmania." Concurrently with their denunciations of transportation, the colonists on the mainland excluded by legislation conditionally-pardoned convicts

[1] In announcing, 22nd February, 1853, that he intended to carry out Sir John Pakington's policy, and that no more convict ships would be sent to Van Diemen's Land, the Duke of Newcastle told Sir W. Denison: "Though I am well aware that this decision is at variance with the opinions which you have been led to entertain as to the real interests of the colony, I am equally confident that your accustomed zeal and discretion will be exercised in endeavouring to introduce the new order of things successfully. . . ." In a long despatch Sir W. Denison urged the Duke (June 1853) to grant "such an amount of assistance towards the introduction of free labour as may in some measure relieve the (inhabitants) from the difficulties which the sudden cessation of transportation will necessarily entail upon them." He also told the Duke (July 1853) that for some years to come a military force of some strength will be required to support the civil authorities in maintaining order among the very bad class of offenders who will be left on the hands of the Government."

[2] He said: "There is a feeling here that to the name of Van Diemen's Land a certain stigma is attached, and that the name is somehow connected with the former condition of this colony as a penal settlement."

who strove to migrate from Van Diemen's Land. Addresses were transmitted to the Queen. The Adelaide prayer was that the province might be placed upon "the same footing in all respects as regards conditionally-pardoned convicts as the United Kingdom." Reasonable as was the request, Sir John Pakington demurred to the conclusion that there was a strict analogy between allowing convicts to return to the overcrowded scene of their former misconduct, and permitting them to immigrate to a place like South Australia. From a Bill which the Adelaide Legislative Council passed, to exclude all persons who had served their whole term of sentence or received a free pardon, Sir Henry Young, with the advice of his Executive Council, withheld the Royal Assent in 1852.

Mr. Latrobe, in Victoria, assented (September 1852) to a stringent Act, commonly known as the Convicts' Prevention Act. He admitted (2nd December, 1852), that it "overlooked many salient principles of constitutional liberty," but "it was considered highly desirable on the part of the Government to show every disposition to co-operate heartily with the colonists." He felt it his "duty, under the extraordinary circumstances of the times, to yield the Royal Assent." The Act was limited to a duration of two years. Mr. Latrobe received the thanks of the Legislative Council for assenting to it. In his despatch accompanying the Act, and in one of later date (2nd March, 1853), it was observable that Mr. Latrobe wrote, that remissions "of sentence have been protected, and the Royal prerogative of mercy has been saved,"—and that the "main effect of the Bill has undoubtedly been to check the introduction of the convicts under sentence." The title of the Act was somewhat deceptive, inasmuch as it professed to deal with "offenders illegally at large." But it dealt in fact with holders of conditional pardons, who were legally in the colony. Mr. Latrobe's despatch partook of the character of the title. Sir W. Denison promptly arraigned the Act, and prayed that it might be disallowed by the Crown.[1] It was vicious. A man holding the Queen's pardon might, in spite of it, be treated as a felon, kept to labour in irons for three years, and know that his property

[1] There was provision in the Constitution Act for disallowance of Acts by the Crown.

had been pillaged, one half for the benefit of an informer, the other half for the use of the colony of Victoria. Even those who had become absolutely free to return to England might be dealt with as offenders illegally at large, unless they were able to produce evidence satisfactory to their persecutors. The crudeness of the measure was shown by the ignorant assumption in the preamble, that a conditional pardon was similar to a ticket-of-leave. Public meetings in Van Diemen's Land and a petition to the Queen denounced the Act as disgraceful and vindictive, and prayed that it might be disallowed. The Governor heartily supported the prayer.

Sir W. Denison had no sympathy with the pliancy or weakness of Mr. Latrobe. The strong man in the Victorian Executive Council was the Attorney-General. He, as an ardent supporter of the Anti-Transportation League, could have made his own terms on acceptance of office, if any difficulty had been anticipated with regard to convicts, just as a law officer, Mr. Francis (afterwards Chief Justice) Smith stipulated for full freedom to oppose transportation when he accepted office at Sir W. Denison's hands. Him the latter respected. But it was otherwise with his Colonial Secretary, H. S. Chapman, and another official. Mr. Chapman had been a subordinate agent for the Papineau party in England: and his first employment under the Crown was received from the Whigs in connection with an inquiry about hand-loom weavers in England. He was intensely industrious. He was sent to New Zealand as a Judge in 1843. In 1852 he was appointed Colonial Secretary in Van Diemen's Land. A proposition for an address praying the Queen to abolish transportation being mooted, the Governor conferred with Mr. Chapman as to the best mode of meeting the difficulty. But the latter had already conferred with the proposers, and was so far committed, that he was fain to tell the astonished Sir William, that he was unable to vote against the motion. The Governor (to use his own words) "pointed out how improperly he had acted in accepting office in a convict colony while he held such opinions, and how unfairly he had dealt with me in keeping these opinions secret from me, and from all the members of the Government."

Sir W. Denison thought it would have been right to suspend him at once, but his "compassion was excited by his statement,

that in such a case he would be left penniless." Leave of absence was granted, pending reference to England, where the position assumed by the Governor was maintained.[1] A similar fate awaited the other officer, Mr. Turnbull. Chapman shrunk from voting at all, but Turnbull voted against the Government.

The Duke of Newcastle (April 1853) pointed out the discrepancy between Mr. Latrobe's despatch and the terms of the Victorian Act. He summed up the objections to it, but expressing his anxiety to avert the evils which it was intended to obviate, did not move the Queen to disallow it forthwith. He framed an Order of disallowance, which was to be dormant until promulgated in the colony simultaneously with a fresh enactment free from objection. Such an Act was to exempt holders of conditional pardons from its operation. But this was unpalatable to the Victorian House. The Bill prepared by the Government was remodelled so as to embody all the condemned provisions. On a division, of 34 votes against 7, conditional pardons were rendered ineffectual to save an immigrant from penalties; and among the 34, a Government official, the estimable Mr. Pohlman, Chairman of General Sessions, recorded his name. Nominee unofficial members swelled the majority. Only one elected member voted with the Government. He came from Geelong. Mr. Foster, Captain Clarke, Mr. Childers, Mr. Stawell, and two other officials formed his supporters.

Mr. Latrobe urged the Duke of Newcastle to sympathize with the majority, but, in face of the previous disallowance, reserved the Bill for the Royal pleasure. At the same time he withheld any announcement of the Order of disallowance of which he had been advised,—but which he had not at that date received. It had been despatched from England in September 1853, and was on the sea when the Legislative Council re-enacted the measure.

There was much correspondence between the Governments at Melbourne and Hobart Town on the practical oppressiveness of

[1] In a private letter Sir W. Denison said: "The Opposition members are furious at the removal of these two men; they looked forward to the presence of two traitors in the camp of the Government as being a certain assurance of victory; and are correspondingly annoyed when they find that the result of their attack is the ruin of their tools and an exposure of themselves." Mr. Chapman went to Victoria, practised at the bar, and after some time returned to New Zealand as Judge there.

the Act. A commander of the 'Yarra-Yarra' steam vessel was fined £100 (February 1853) for carrying a man to Port Phillip. The man was erroneously assumed to be not free. Captain Gilmore's character was irreproachable, and no man could dream that he would be guilty of infringing the law. He was as well known in Melbourne as in the other colonies, and highly respected in all. But the community was in one of its procacious humours. The evil it dreaded was great, and the resolution to stifle it was feverish. The man Barry, for whose presence in the 'Yarra-Yarra' Captain Gilmore was fined, had previously been arrested and sent back to Launceston under the provisions of the Convicts' Prevention Act. Proved to be free, he had returned in the 'Yarra-Yarra.' On recapture he was sentenced to work for twelve months on the roads, and Captain Gilmore was warned from the Bench that for a "next offence" the "highest penalty—imprisonment"—would be awarded to him. The law officers in Van Diemen's Land recommended that a writ of Habeas Corpus should be sued out for Barry in the Supreme Court of Victoria, and that he be provided with the proofs of his freedom, vouched by Sir W. Denison's signature.

Sir W. Denison sent extracts from official records to Mr. Latrobe. They proved Barry's freedom; that consequently he had been unjustly treated; and that Captain Gilmore had been unjustly fined. To Mr. Latrobe and his advisers they proved these facts in vain. Sir W. Denison was told that although Barry was really free, yet as he had not produced the document necessary to prove the fact, he must, like others, "take the consequences, and whatever these may be they have nobody to blame but themselves." "If a man who never had been a prisoner should be imprisoned, the principle of compensation would be most readily entertained; but it can scarcely be looked for in the case of an individual who is found to have been within any reasonable period a prisoner of the Crown." With those who could write thus it was vain to reason. The fury of a mob sometimes owes its origin to the spur of a healthy sentiment which is perverted into frenzy, and in like manner the whole people of Victoria were abandoned to a passion which had carried them far from the wholesome horror of crime which prompted resistance to transportation. Sir W. Denison sent a

reply, logically effective,[1] and transmitted the papers to England (September 1853). The Duke of Newcastle informed him (December 1853) that he had already forwarded to Mr. Latrobe an Order disallowing the Act. It has been seen that knowledge of the disallowance did not induce the Legislative Council of Victoria to qualify the provisions objected to.

When Sir Charles Hotham accepted office as Governor he had serious conferences on the subject of the Bill in Downing Street. The Duke of Newcastle could not sanction a law which excluded "conditionally-pardoned men" from Victoria. Sir Charles Hotham suggested a system of a limitation of domicile to certain districts in the colony. The Duke concurred with the proposition, which, if pardonable in the new Governor, was ridiculous in the Secretary of State. Sir Charles Hotham took with him as private secretary Captain J. H. Kay, R.N., who had resided for many years in Van Diemen's Land, and ought to have warned him that his proposition was absurd. No sooner did the Governor land than he learned the truth:

"However reasonable men might be on other topics, they could entertain no argument on anything relating to the convicts, and whilst professing the greatest devotion to Her Most Gracious Majesty and attachment to the mother country, they did not scruple to let it be known that the maintenance of those ties depended upon their continuing free from coercion in what might relate to the convict class."

He devised a scheme by which Commissioners for Passports appointed by the Governor of Victoria might reside in other British possessions. Immigrants from such possessions, unprovided with passports, were to be liable to severe penalties. He hoped it might pass through the House. Meanwhile a new Secretary of State, Sir George Grey,[2] commented upon the misleading nature of Mr. Latrobe's despatch, which seemed to imply that only "convicts under sentence" would suffer under the Act. The terms of the Act, however, were more comprehensive than the description of it, and it could not be sanctioned in its existing shape.

[1] Parliamentary Papers, vol. liv. 1854.

[2] Parliamentary Papers, vol. xxxix. 1855. Despatch to Sir C. Hotham. 24th June, 1854.

Finding from Sir W. Denison's despatches that conditionally-pardoned men were imprisoned, Sir George Grey directed Sir Charles Hotham to grant, "without delay," free pardons to any "such alleged offenders against the Act." A copy of the despatch was published in a newspaper in Van Diemen's Land, and it aroused indignation in Melbourne. Meetings of thousands of persons, many of them men of highest repute, most of them industrious tradespeople and artisans, assembled to denounce the directions of Sir G. Grey and the nefarious conduct of Sir W. Denison.[1] A Committee was appointed at a great meeting in Melbourne to watch the progress of events. The Mayor (John Hodgson) presided, and was appointed chairman of the Committee.[2] On the Committee were many colonists who had assisted in founding the Anti-Transportation League in 1851.

Sir Charles Hotham's Passport Bill was discarded by the Legislative Council. Mr. William Nicholson introduced an Influx of Criminals Prevention Bill, which was more stringent than its disallowed predecessors. It enacted that no freed man should go to Victoria until three years had elapsed after the expiry of his sentence. It was limited to one year. The law officers considered that the Governor was at liberty to assent to it, and on the 16th November, after the first riots at Ballarat had indicated that danger was in the air, and that no loyally disposed person could be spared from the ranks of the Governor's supporters, he swept the obnoxious subject from his path within three weeks of the occurrence of a desperate and wide-spread endeavour to strike down all symbols of law and authority, and to erect that revolutionary substitute for government which Dr.

[1] The irritation against Sir W. Denison was made fiercer by the fact that it was known that he had been appointed Governor of New South Wales, and Governor-General, and thus had a quasi, though not practical, connection with Victoria.

[2] Walking from the meeting with the author, the American Consul remarked: "I don't know what *you* think, but in *our* country we should think that a very great meeting." He was curious to see how Sir C. Hotham could surmount his difficulties. The Governor's bold act in giving the Royal Assent was not expected by the Consul. It was final; although Lord John Russell wrote (4th June, 1855), that it was impossible for Her Majesty's advisers to "recommend her to allow such a law to remain in operation in one of her colonies."

Lang and his supporters so frequently praised under the name of Freedom and Independence.

When the discovery of gold is treated of it will be seen that it was well that Sir Charles Hotham swept from his path an obstacle which would have left him absolutely without one supporter in a population exceeding 300,000 persons. Sir W. Denison vigorously remonstrated with Sir Charles Hotham against the Act, but the latter declined to discuss the subject with him. Their difference of opinion did not restrain Sir C. Hotham from requesting, nor Sir W. Denison from loyally affording, military assistance (within three weeks of their difference), when the Ballarat riots occurred. Nevertheless, after sending troops to Melbourne, Sir W. Denison trusted that "peremptory directions" would be sent to Sir C. Hotham as to disallowance of the Influx of Criminals Prevention Bill.

Lord John Russell admitted (4th June, 1855) the exceptional circumstances which impelled the Governor to assent to the Act, which was not immediately disallowed. He proved his incapacity to understand the condition of the colony or to abide by a principle, by suggesting that though it was intolerable to bar conditionally-pardoned men from access to the colony, it might be proper to exclude them "from the gold-fields under a moderate penalty." These inept proposals Sir Charles was to "explain clearly" to the Legislative Council. Their fate was certain. Infringers of the Act, when once on shore, could not be barred from walking to the gold-fields. To sanction solemnly an impossible task, and to disallow as unjust a possible one which was of kindred nature, was an enterprise in which the Victorian Legislature would not aid Lord John Russell.

Wentworth's Lien on Wool Bill, continually renewed in face of condemnation in England, afforded a precedent. Sir Charles Hotham's Act, 18 Victoria, No. 3, "to prevent the Influx of Criminals into Victoria," originally limited to one year, was periodically revived by an Act to continue it, until, in 1859, Sir Henry Barkly assented to its continuance without limitation as to time, in common with several other Acts. As Acts assented to in the colony, though liable to disallowance in England, were in force until such disallowance might be promulgated by the Governor, the local Legislature had the matter under its control.

The Governor had to justify his conduct to the Secretary of State, but for his position there was little consideration in the colony. The English Government in this instance allowed the matter to pass into oblivion. The discontinuance of transportation to Van Diemen's Land deprived it of significance. A few bad characters were brought under the penalties of the Act, but it was notorious that persons who might have been seized under it, and who were pursuing honest occupations, were unmolested. The subject on which the whole colony had once been in arms soon ceased to excite a thought. The riotous class of convicts by their dissipated lives consumed themselves, and Victoria was left to deal with the evils engendered by her own institutions. One of them afforded a strange contrast to her attitude with regard to emancipated convicts. She dreaded their arrival, and hazarded her loyalty to exclude them. But to the twenty thousand who had arrived before special legislation was resorted to, she gave votes which made them a power in the land.

South Australia was unalarmed by any influx of convicts. She ever took part in guarding her soil from their feet; but it was to join in the scramble for gold, and not to till the land, that emancipated scoundrels migrated to Australia, and the agricultural colony was comparatively free from them. New South Wales had so long ceased to receive British convicts that Sir Charles Fitzroy in December wrote that only 1640 were in the territory in 1851, and that it was computed that by annual diminutions, by reason of death or emancipation, there would be none of the class remaining in the land in December 1858.

When some persons sought for the introduction of convict servants in the northern districts of the colony, Sir John Pakington (December 1852) told Sir Charles Fitzroy that it had been resolved to discontinue transportation "to any of the colonies on the southern or eastern sides of Australia." Further solicitations evoked statements from the Duke of Newcastle that he would adhere to the views of his predecessor.

Few more words are necessary with regard to transportation to the mother-colony of the Australian group. To wipe out all remembrance of the fact as speedily as possible, the Legislative Council, in October 1854, urged—and Sir C. Fitzroy supported

their request—that absolute pardons should be granted to all holders of conditional pardons, so that "every vestige of the former penal system of New South Wales should be effaced at the earliest possible moment." In Lord John Russell's mind so sweeping a proposal aroused feelings which ought to have made him sympathetic with free colonists of Victoria, whither thousands of such freedmen had migrated. It would be inconsistent with "the caution which should characterize the administration of criminal justice," and "would give rise to much alarm and anxiety" in England. He would carefully consider "individual cases."

When the proportion which the pardoned men would have borne to the population of the United Kingdom is considered, it must be admitted that if the idea of their infusion justified alarm in England, the inhabitants of South Australia and Victoria had vital grounds for protesting against the influx of such ex-criminals amongst their small populations, and amidst peculiar temptations. To a similar request from Van Diemen's Land a similar answer was made by Lord John. It does not seem necessary to analyze at any length the manner in which the relics of penal institutions decayed in Van Diemen's Land. How Norfolk Island was again swept of convicts and left garnished for occupation by the Pitcairn Islanders, who went thither in 1856 (though some returned to the Pitcairn Islands), may be briefly noted.

One remarkable effort was made in Hobart Town to rebuke the Victorian Legislature when Sir Charles Hotham's Passport Bill was under discussion in Melbourne in 1854. A Bill was introduced by a private member to prevent "fraud by persons assuming to be Commissioners for the issue of Passports." They were to be liable to "imprisonment with or without hard labour or solitary confinement for any period not exceeding one month for every offence," committed in their presumed capacity. General search-warrants were to enable the police to deal with them. Sir W. Denison reported that he had induced the proposer of the Bill to withdraw it. It would have been but *brutum fulmen* if passed, for the Passport Bill at which it was aimed gave place to Mr. Nicholson's stringent measure in Victoria.

When Sir W. Denison was retiring from Van Diemen's Land he sent to England a warm encomium upon the Comptroller of Convicts, Dr. Hampton, who after Sir W. Denison's retirement became the cause of an action involving the question of privilege of the Legislative Council, and as it arose out of his unwillingness to submit to examination with regard to the Convict Department, it may be proper to allow that Department to receive any reflected light which the subject affords. The old form of Government was about to expire. A new Constitutional Act, passed in the island in November 1854, had been sanctioned in England. A few necessary measures were required at the hands of the existing House in its session of 1855. It had by a majority of 18 to 6 appointed a Select Committee to investigate the Convict Department. There were rumours that Hampton and others had unduly derived profit from labour of prisoners by receiving articles made at the factories; and on general grounds inquiry was demanded. The local Executive had already censured the incriminated persons (including Hampton) mildly, and had reported the fact to the Secretary of State. The Governor, on the plea that the penal establishments were under Imperial control, and that the matters alluded to had already been disposed of, subject to approval or disapproval in England, foolishly declined to direct the attendance of officers and the production of papers before the Committee. He, like Sir W. Denison, had conceived a high idea of Hampton.

The indignant Committee resolved to summon Hampton and Colonel Champ, the Colonial Secretary. Mr. T. D. Chapman, on the part of the majority in the Council, carried, after warm debate, a resolution affirming that neither Secretary of State nor Queen could grant such exclusive privileges as were claimed by Hampton's friends. The Attorney-General, Mr. F. Smith, who had refused to accept office from Sir W. Denison except with full freedom to oppose transportation, now formed the main strength of the Government in opposing doubtful action on the part of his former fellow-labourers. His character was so high that none imputed servility to him. His arguments irritated his opponents because they were unable to contend with them otherwise than by wild declamation. Nevertheless there were amongst them honourable names of sincere believers in what

they asserted. Mr. T. G. Gregson (an early advocate for representative institutions, and an opponent of transportation) was one of the most violent in assailing the Government. In the coarsest language, but with undeniable vigour, he railed not only at Dr. Hampton and his subordinates, but at the irreproachable Attorney-General. One officer in the Convict Department, J. D. Balfe, had an Irish reputation before he appeared as Assistant-Comptroller under Hampton. He had been a coadjutor of Smith O'Brien and of Charles G. Duffy, and his contributions to the 'Nation' newspaper (under the style of Peter Carroll, Stonemason) made him famous. After the miserable failure of the revolution into which Duffy and others precipitated Smith O'Brien in 1848, the remnants of the Repeal Association confided to the public their opinions of one another. John Mitchell complained that though Duffy was the "very man who urged poor Smith O'Brien upon his Tipperary war," he attempted to "evade the responsibility for articles published by himself," and was guilty of "miserable grovelling" to the Government to escape punishment. After quoting Duffy's writings, Mitchell said (1849): "Thus blasphemes, thus banters, thus snivels, this most pitiable sinner." Duffy in his turn, when his old comrade Balfe appeared as a salaried official in Tasmania, was said to have attacked him in the 'Nation' as a "seedy, sinister-looking, unwashed, low-bred, and low-souled varlet, a Government official with a salary of £300 a year.[1] . . . He is the hired bully of Sir W. Denison . . . let Mr. Balfe, J. P. beware. There are ropes and hangmen in Australia, and many an Irish voice to hoot him if he mounts the gallows." When this sentence was quoted while Balfe was a witness before the Supreme Court in Van Diemen's Land, he retorted: "I know C. G. Duffy. I have seen the statement he made about me in the 'Nation.' I believe him to be an inveterate liar."

Such were the flowers of speech which the Irish conspirators showered upon one another after adversity. What they might have said if drunk with success, may be imagined.

Balfe had to undergo peculiar torture at Gregson's hands.

[1] If it was he who thus wrote in 1852 Duffy could not then have hoped that in a few short years he might claim a pension from the Queen's bounty in Victoria, and affirm that it was necessary for his maintenance.

The latter had, as agent on a large estate in Tasmania, disagreed with his principal, who provided another manager for his property. The Hobart Town 'Daily Advertiser' alluded disparagingly to Gregson, who brought an action in which he recovered £50 damages. He summoned Balfe, but did not put him in the witness-box; and as Gregson conducted his own case Balfe heard himself assailed in the coarsest language. Balfe horsewhipped Gregson outside the Court. The latter instituted criminal proceedings, and Balfe was fined £200 (paid instantly by voluntary subscription). Such were the characters and antecedents of some of the actors in the drama which excited the Hobart Town public in 1855. Sir Henry Young unwisely allowed himself to appear as a partisan in the strife in which such actors were involved. On the 6th September, Hampton declined to attend the Select Committee. On the 11th the Council by 20 votes against 7 declared him "in contempt." The Serjeant-at-Arms went to arrest him, and received his written statement that the Speaker's warrant was illegal, and that Hampton would forcibly resist any trespasser who should dare to strive to execute it. Mr. T. D. Chapman (by 18 votes against 7) induced the Council to authorize the Speaker (Michael Fenton) to issue his warrant requiring all persons to assist in apprehending Hampton. There were secret and serious discussions. On the 14th September, Hampton wrote to the Speaker that he was willing to test the question at law by allowing the Serjeant-at-Arms to arrest him until his legal advisers could sue out a writ of Habeas Corpus, and the return thereto might be duly tried. The Council (by a division of 15 to 9) refused to entertain such overtures. The Governor was apprehensive. It is the vice of assemblies, where the sense of responsibility is spread among a number, to hurry into action of which perhaps no one would have accepted the risk. The chorus of a pack drowns the individual notes of leading hounds.

Hampton, under advice, allowed the warrant to be executed on the 15th September. The Serjeant retained custody of him, but a writ of Habeas Corpus was served on the Serjeant on the 17th. Hampton, on the plea of ill-health, supported by a medical certificate, applied for leave of absence. On the same

day the Governor granted it. On the 18th the Serjeant-at-Arms told Hampton to go with him to the bar of the House, and Hampton refused. The Council resolved that their Speaker and Serjeant should be permitted to comply with the summons of the Supreme Court, and also (by 15 votes against 13) that an address should be sent to the Governor urging him to order that as many police as might be required should assist in enforcing compliance with the Speaker's warrant for Hampton's arrest. The Government had vainly contended in debate and in private. There was excitement in the Council. The Governor walked into it, and used his last weapon in defence of Hampton—the man whose word had been so funest in influencing Sir Eardley Wilmot's fate. Sir H. Young, with great reluctance, interfered "between the assertion and the practical enforcement of powers and privileges which you have thought proper to assume." Their votes purported that they would not abide the issue selected by Hampton in the Supreme Court, and in order to enable the judicial tribunal to pronounce judgment on the legality of a warrant affecting the liberty of the subject, the Governor prorogued the Council until the 20th October. The effect of the prorogation was the immediate liberation of Hampton, as the Speaker's warrant died with the session. Further prorogation became necessary. Judgment was delivered on the 27th November, after an able advocacy of Hampton's case by Smith, the Attorney-General. Chief Justice Fleming and Judge Horne concurred in giving judgment for Hampton, though it was on technical grounds mainly that Horne conceived that the Council had erred in assuming general Parliamentary privilege, and acting without compliance with law. Hampton meanwhile had left the colony, and was visiting his old patron Sir W. Denison. He had the ill taste to write (6th December) from "Government House, Sydney," to Sir Henry Young:

"I recently had the honour verbally to state to your Excellency that the unlawful proceedings of a tyrannical majority of the Legislative Council of Tasmania, and the consequences of those proceedings, had, in my opinion, shown most clearly that the existence of an Imperial Convict Department within that colony must continue to be such a constant source of embarrassment and annoyance to the Government as to render it expedient . . . to comply with the reiterated requests

of the Legislative Council by transferring the whole management of the Department to the colonial authorities. . . ."

He thus strove to qualify as a public procedure his recent perverseness. It would have been easy for him personally to attend before the Select Committee, and to respond on all subjects but those in which Imperial interests might demand his silence. He preferred to plunge the Governor into an unseemly quarrel. The Governor supported the proposed transfer, which was readily acceded to by the Secretary of State on the principle of a fair division of the cost of controlling the actual number of Imperial and colonial prisoners. Hampton's contumacy drew an important judgment from the Judicial Committee of the Privy Council,[1] but did not serve his personal ends. Mr. Boyd, Civil Commandant at Port Arthur, appeared before a new Select Committee, and gave all the information required. He produced an accurate account, by which it appeared that Hampton had profited to the extent of about ten guineas by the labour of the convicts. Hampton meanwhile had placed the sea between himself and his tormentors, and went to England, to re-appear in 1862 in Western Australia, where it was thought that his administrative skill in managing convicts might be found useful. The Legislative Council, baffled by his escape from Tasmania, though it renewed its inquiries, received a report from a Select Committee that, owing to his absence, it was useless to do more

[1] Michael Fenton and James Fraser, appellants: John Stephen Hampton, respondent. February, 1858. Held that the *Lex et consuetudo* Parliament of England is not conferred upon the Legislature of a colony by the introduction of English common law, and that no distinction exists in this respect between Colonial Legislative Councils and Assemblies whose power is derived by grant from the Crown, or created under authority of an Act of the Imperial Parliament. (Moore's Privy Council Reports, vol. xi.) There was an old appeal from Jamaica (Beaumont *v.* Barrett) in which the Privy Council sanctioned a different doctrine, but a subsequent appeal from Newfoundland (Keilly *v.* Carson) reversed the decision in Beaumont *v.* Barrett, and Fenton *v.* Hampton confirmed the decision in Keilly *v.* Carson. Both the previous cases were largely referred to in the arguments in Fenton *v.* Hampton. The Tasmanian case was heard by Lord Justice Knight Bruce; Right Honourable T. Pemberton; Sir Frederick Pollock (Lord Chief Baron); and Lord Chief Justice Turner. Judgment was pronounced (17th February, 1858), by the Lord Chief Baron, and the judgment of the Tasmanian Court was affirmed with costs.

than report the evidence taken. In spite of the effects of Hampton's skill, so highly lauded by Sir W. Denison, there remained difficulties in controlling the convicts left in Tasmania when transportation thither was discontinued.

The capable John Price, who after acting as Police Magistrate at Hobart Town, had by his stern vigour restored Norfolk Island to a state of discipline, was lost from the service of Van Diemen's Land in 1853. The reckless convict class which had migrated to Victoria would not abandon their evil ways although living in a land of gold. Their hardihood and cunning seemed to require special supervision when they were re-convicted in Victoria. Mr. Price was invited thither, and many an expert scoundrel recognized him as a former controller. For several years he maintained order in the penitentiaries at Melbourne, and then fell a victim to the ferocity of his subjects. Visiting a gang of them who were working on the tongue of land afterwards formed into a jetty at William's Town, he was assaulted and crushed with masses of rock and stones. His shortsightedness probably prevented him from detecting the intended attack, which was made from behind him while he was listening to a pretended petition from one of the convicts. Before the guards could rush to the rescue he was so battered that to any ordinary man death would have been instantaneous. His rare strength of frame preserved an appearance of life for many hours. Several of the murderers were executed. It seemed impossible to find a successor to Mr. Price, who had not been trained in Tasmania, and Colonel Champ, who had recently been Premier there, was procured for Victoria by Sir Henry Barkly. It was perhaps the withdrawal of Mr. Price from Tasmania that enabled a gang of desperadoes of the worst class to escape from the barque 'Lady Franklin' in 1853. While a new prison was being built at Port Arthur for the incarceration of the worst class of criminals, and pending a reference to England on an appeal from the Legislative Council against pouring back to Van Diemen's Land the prisoners at Norfolk Island, Sir W. Denison sent "twenty-two men of a very bad class" for "secure detention there."[1] The 'Lady Franklin' sailed with them for

[1] Despatch, 15th December, 1854. Parliamentary Papers, vol. xxxix. 1855.

Norfolk Island. On the voyage the prisoners seized the vessel at night. They compelled the master, under threats of murdering all on board and scuttling the barque, to tell them her position as they sailed northwards. For twelve days they ruled on board, carousing on the provisions. Seeing them drink his "wine, porter, &c." the master cared little for the final result, his feelings being "so worked upon" by the waste he saw. On the 8th January, 1854, the prisoner-mutineers compelled the crew to rig the long boat, and took in it and in the cutter some tons of provisions, charts, fire-arms, &c. They left on board two convicts who declined to accompany them. It was reported that if the guard on board had been vigilant eight or nine of the runaways could not have cut through a thick plank, and, escaping from their prison, entered the cuddy, taken the ship's arms, gained the quarter-deck, and seized the fire-arms in the rack on deck before releasing the other prisoners, and seizing the command. Such occurrences nevertheless intensified the horror of colonists in Victoria, and strengthened their resolution to pass the Bill which Sir Charles Hotham assented to, and Sir W. Denison denounced in 1854. Enough, however, has been said to show the condition of the colonists with regard to criminals exported to their shores, and the temper of those who deemed themselves sufferers from the process. The technical troubles incurred in removing the last traces of the system are hardly worth narration, though they occupied men's minds seriously at the time. With their changed name for their island and for themselves, the Tasmanians may be allowed to shake off the later reminiscences of the system against which they struggled so gallantly when Mr. Parkes despondently declared in Sydney (1852), that they had "no strength to resist the unparalleled circumstances of the colony." There were matters of accounts connected with the control of convicts, but there was no serious dispute about them,—the quarrel of Hampton with the Legislative Council having been merely local if not personal. The Imperial Government undertook to pay a fairly rated proportion of the expense caused by the residue of Imperial prisoners. The Executive Council in Sydney had advised upon the terms there. The same principle was adopted in Hobart Town. The transfer of responsibility and control to the local authorities necessitated

several enactments in 1855, under the government of Sir Henry Fox Young. The loss of forced labour was followed in Tasmania as it had been in New South Wales by agricultural and general distress. Wages were high, as might be expected, when all able-bodied freemen could in a few days transport themselves to the gold-fields or labour markets of Victoria. Sir W. Denison wrote regretfully from Sydney: "My poor old colony, Van Diemen's Land, is in a miserable condition. I kept warning the people of what would be the result of the cessation of transportation, and the blow has now come upon them." The objects of his solicitude, however, would not even repent. When there were rumours that the projected separation of Moreton Bay from the colony of New South Wales was to be accompanied by the formation of a new penal establishment in the northern territory, the Legislative Councils, in Victoria and Tasmania, vehemently deprecated the proposal. The petition from Victoria to the Queen was the work of the President of the Council, Dr. (afterwards Sir James) Palmer, who predicted from such a project the perishing of order and the paramount supremacy of frightful crimes[1] in Victoria, from which it would be impossible to exclude convicts, landed in Australia or in any adjacent island. The petition was "very graciously" received, and as Earl Grey did not return to power the colonists slept securely. The reputation of Port Arthur as the inner circle of the condemned spirits of the abolished system remained for years to make men shudder at the vile depths to which their fellow-creatures could sink. On the south end of Tasman's Peninsula was the penal settlement. Tasman's Peninsula was connected with Forrestier's Peninsula by Eagle Hawk Neck, seventy-eight yards wide. Eighteen savage dogs were chained so that no man could pass through the line of guard. Armed men were stationed at every point of vantage. At East Bay Neck, where Forrestier's Peninsula was joined to the island by an isthmus less than a quarter of mile in width, armed constables were stationed; and the

[1] "Being of opinion that the foundations of a vast empire are already laid in this hemisphere, which should bring glory to the British Crown, we are solicitous that no unhappy bias may be given to its nascent energies, and that nothing may be done to weaken the loyalty which we bear towards your Majesty's person."

waters adjacent to each Peninsula were keenly scanned by perpetual patrol to prevent attempts to escape by swimming, which not even the ravenous sharks sufficed to arrest. Not hope but desperate preference of even one day's wild freedom from the water-girt prison to its enshrouding grasp, prompted the hopeless effort to escape. Even if a man could pass through the warders and the ferocious watch-dogs, or escape the jaws of a shark, when the island might be attained, there also all men's hands would be against him, and he would be hunted down to be relegated to Port Arthur or done to death. While the plague-spot of transportation was cauterized in the eastern colonies it was allowed to spread in Western Australia, and the authorities were sciolists in treating it. One instance may suffice. In January 1852, there were horse-races at York, and about thirty ticket-of-leave men went thither in defiance of prohibition by their superintendent. They carried bludgeons. The magistrates suspended the races, remonstrated with the men, prepared to swear in as special constables the free settlers on the ground, and arrayed some fifty or sixty of the aborigines ready and willing "with their native weapons to give assistance if necessary."[1]

The mutineers thought it prudent to return to their depot, the magistrates asked pardon for them "on the plea of their returning to quarters so quietly," the Governor sent the Perth police magistrate to inquire, and the latter taught "a lesson" by remanding "six ringleaders to the principal depot at Fremantle." The Governor asked for more soldiers from England. Sir John Pakington approved of the firmness displayed in depriving the ringleaders of their tickets-of-leave, and warned the Governor that "insubordination among convicts will never be successfully met by timidity or weak indulgence;" but he could not send soldiers. Captain Fitzgerald found, as early as 1852, that the halt and infirm amongst his prison-subjects would require his care. To enable those who could not work on roads, to weed and perform light tasks, he sought for a Government farm. The wild squandering of Crown lands by grants had so filed down the public estate that he was compelled to ask for

[1] Strange as the facts appear, they were gravely communicated by Governor Fitzgerald to Earl Grey, as stated in the text.

leave to exchange 1280 acres of Crown land at Champion Bay for 640 acres twelve miles from Perth. Of the desired land twenty acres were cleared and forty were fenced in. The seller would also engage to open a store on his land at Champion Bay, which would be a boon to the settlers there.

Sir John Pakington pointed out that the Land Sales Act required that ready money should be paid for all land sold by the Crown, and the Governor's notable project was abortive. It is principally worth mentioning as a sign of the vice in colonization which Western Australia exhibited, and to which Gibbon Wakefield by his 'Letter from Sydney' administered a deathblow. Had the Government managed the public estate prudently, only parting with it wisely and for a sufficient price, they could not have been driven to seek for a few acres at the hands of a settler in 1852. With land at hand and convicts maintained at Imperial cost, they could easily have cleared wild lands on which infirm prisoners might afterwards have been employed.

The consternation of the Governor, when in 1852 fourteen free persons departed to the Melbourne gold-fields, and he thought a thousand might follow, if they could find means to pay for their passages, made him cry to Earl Grey that his scheme of neutralizing the evil effects of transportation, by sending equal numbers of bond and free to the colony, would itself be neutralized by a re-emigration of the free. The dread of the colonists when they learned that Lord John Russell had stated in Parliament (February 1853) that transportation was to cease, caused them to petition for its continuance. The welfare, the existence of the colony, were affirmed by public meetings to depend upon it. The Duke of Newcastle assured them (September 1853) that "no idea is entertained at the present time of ceasing to send convicts to Western Australia."

Captain Henderson, R.E., was Comptroller-General in the colony, and like many of that capable corps, whose services throughout the world have been so great in proportion to their numbers, laid the settlement under obligations, which were acknowledged freely by the Governor.

The police force in the colony was, in 1852, distinguished

under two heads—native and convict. As usual, the services of one native were available in tracking to their lairs any of his countrymen of a different tribe from his own. The natives were also useful in pursuing runaway convicts. The so-called native police consisted of twenty-four persons, of whom eleven were natives. There were nine white troopers, and the same number of mounted blacks. The cost of the corps was £1500 a year. The convict police consisted of sixty-three persons, mounted and foot, of whom twenty were mounted, and several of these were natives. The convict police cost £5120 a year. Captain Fitzgerald obtained Sir John Pakington's permission to amalgamate the two forces of police, and to add to the total number. The Secretary of State had, as in former days with regard to New South Wales, the duty of controlling the details of an expenditure which was an Imperial charge. When allowances of victuals to convicts assigned to public servants (made in Perth on the supposition that they were not improper) were condemned in England, the Governor with unofficial bluntness apologized for the mistake, but added, "there is, sir, I beg to say, in the minds of many, something in connection with the word 'convict' that requires occasionally more than the ordinary inducement to take service in such a department."[1] The gallant sailor did his duty as a gaoler, but would not condescend to exalt it. There was no pleasure in it at any time. When his estimates were cut down in England in 1852, from £110,446 to £86,600, it did not seem that he could have the melancholy satisfaction of avoiding disgrace or failure. He obtained a body of a hundred sappers and miners from England, and in Western Australia, as elsewhere, they were invaluable in themselves, and as a nucleus for other forces to profit by. The probation system in Western Australia provided that the cost of transportation should be exacted from each convict's earnings in order to recoup the Government. Seven thousand pounds were due from ticket-of-leave men on this account in 1857. There was a singular regulation in force by which ticket-of-leave men were invited to buy their freedom and replenish the public coffers. They could obtain their ultimate conditional pardons by paying thus:—

[1] It was deemed necessary to raise the salaries of certain officers after the allowances were withdrawn.

A convict for	7	years,—for	£7	10*s.*	payable in	1½	years.
„	10	„	10	„		2	„
„	15	„	15	„		3	„
„	20	„	20	„		4	„
„	life	„	25	„		5	„

It was under Earl Grey that these prices were put upon terms of years, and on the lives of Englishmen.

Lectures by prisoners were encouraged. The Governor attended one of them. In an exordium the lecturer hailed the "rare opportunity" afforded for lauding the Governor, and saying on behalf of his "fellow-captives" that they laid at his Excellency's feet their "heartfelt sentiments." "Be assured that these are no mere expressions of fictitious feelings, or of vapid compliments to obtain an adventitious approbation, but the genuine impulses of our souls." The flattered Governor addressed the convict auditory (five hundred in number) at the close of the lecture, and sent a copy of it to the Duke of Newcastle.[1] Captain Fitzgerald referred to England (1853) a question of holidays. Several ministers of different denominations received salaries from the Government for attending to the prisoners. One of them, a Roman Catholic priest, had told some prisoners that they ought not to work on All Saints' Day, and they all refused to do so. There were only three holidays recognized in the colony, without any distinction of creed, and Captain Henderson urged that their multiplication would be incompatible with order and discipline. When three of the recalcitrants had been lodged in cells, the remainder submitted to secular authority. Sir George Grey upheld the local discipline. Shortly before the refusal to work on 1st November, 1853, and perhaps with a view to profit by special holidays on Saints' days, a man admitted as a Protestant desired to change his religion. Captain Henderson thought "such changes should be discountenanced, except where evident proofs are given that they spring from conscientious motives," and that no propagandism by any sect should be allowed within the gaols. Captain Fitzgerald adopted a suggestion (made by the Superintendent, Dixon, who a few days afterwards immured the prisoners who

[1] Parliamentary Papers, vol. liv. 1854.

would not work on All Saints' Day) that all prisoners desirous to change "their religious profession" might do so at once, but that thenceforward no changes would be allowed by persons "under penal restraint." This knot intrinsicate was referred to England, and the Duke of Newcastle recoiled from Mr. Dixon's rule, though he concurred with the order that confinement in prison "should not be rendered subservient to proselytism."

The mind instinctively recurs to the time when early in the century another sailor Governor dealt with a high hand with local affairs, when religious ministrations were made a pretext to promote rebellious designs. But times had changed in England as well as in Australia. Lord Aberdeen ruled nominally where Pitt had ruled indeed; and the Duke of Newcastle was a feeble successor of Dundas.

The days were fast approaching when utilitarianism was to depose the theory of duty—when the most popular speaker in England was to oscillate, or even (in his own words) to "leap and bound" into opposition to almost every principle he had previously professed. The one thing needful in modern time seemed to be to shape a course which, though it should, if possible, appear independent, shall certainly be accommodated to a power behind, which, like that of a reptile, governs in the tail. The subject of transportation, interesting as its victims were to Western Australia, must be dismissed as briefly as possible. To the present generation it is a stumbling-block. To the past it was a horror. To the future antiquarian it will be a study into which men will enter with the curiosity which now attends the disquisitions of Niebuhr on primitive Romans.

In 1854 the Governor congratulated the Secretary of State upon the improving revenue, but admitted that "had it not been for the introduction of convicts, the fascinations of the gold-fields would have literally so depopulated the colony as ere this to have reduced its inhabitants to such officials as it might have suited to remain in the service of the Government." The transportation of women to the colony had first been suggested by the Duke of Newcastle in December 1853. The colonists recoiled. Even the careless shudder at the

association of vileness with the sight of a woman. Even the criminal have heart-recesses in which the beauty of purity is revered.

At Perth and at York public meetings pronounced against the scheme. At Fremantle the Governor said: "The question, I hear, was carried for the introduction of female convicts by a majority, consisting principally of ticket-of-leave men, who in my opinion should never have been permitted a voice in the matter." Some leading colonists told the Governor they would sell their property and abandon the colony if the English Government should send out female convicts. Sir George Grey[1] promptly replied, that in face of the reprobation of the "free inhabitants," and of objections propounded by the Governor and the Comptroller-General, "no female convicts" would (under existing circumstances) "be sent to Western Australia."

The sterile nature of the country and the poverty of its inhabitants did not prevent attempts of runaway convicts to imitate the bushranging exploits of their congeners in other colonies. In May 1854, an ordinance was passed which made it justifiable homicide for a constable or "any free person" aiding him to shoot an armed convict, illegally at large, resisting apprehension or endeavouring to escape.

The probation system in the colony was vaunted as being more humane than the systems which had prevailed elsewhere. Yet it had drawbacks. Captain Wray, Acting Comptroller-General, recommended that the amounts due for passage-money by ticket-of-leave men should be wholly or in part remitted. "The abolition of this payment will remove a wide-spread and very natural discontent among the ticket-of-leave men, and relieve the colonists from a heavy tax, by enabling them to reduce wages." The new Governor, Mr. Kennedy, supported the recommendation, and it was approved by the Secretary of State. To the convicts who had paid in full, and in advance, to the extent of £400, that sum was refunded, to show that though it was pardonable for convicts to break pledges, the Government was guided by a higher morality. The period during which

[1] Parliamentary Papers, vol. xxxix. 1855. Despatch (Downing Street), 16th January, 1855.

transportation was continued to Western Australia was brief. The cessation was brought about, as will be seen hereafter, partly in consequence of remonstrances from the eastern colonies, and partly because it was found necessary on Imperial grounds to reform the criminal system of the mother country. In 1868, eighty years after Governor Phillip founded Sydney, the last convict-ship was despatched to Australia.

CHAPTER XIV.

DISCOVERY OF GOLD.

THE discovery of gold in Australia, though destined to effect great and sudden changes, both social and political, was made many years before those changes were produced by abrupt disclosure that it existed in enormous quantities, and could be obtained by simple methods at what were called "alluvial diggings;" *i. e.* those, where by digging pits, extracting the gold-sprinkled earth, and washing it at the water-side in a wooden cradle (with a series of checks to arrest the gold as the mud and water escaped) large quantities of granular or laminated fragments of gold were collected without scientific knowledge or appliances, and by unskilled labour.

Edward Hammond Hargraves was the unscientific person who disclosed the fact. He had migrated from New South Wales to California. When seeking for gold there, and observing the facility with which it was washed from the detritus or alluvium in which it was imbedded, it occurred to him that he had seen in New South Wales places in which the soil and conformation were like those which yielded gold in America. Possessed of the knowledge needful to test the matter practically, he returned to Sydney. But long before that time gold had been picked up in Australia, and had excited eager but evanescent curiosity. Count Strzelecki, in 1839, reported to Sir G. Gipps that he had found in the Vale of Clwydd, "an auriferous sulphuret of iron yielding a very small quantity of gold, although not enough to repay extraction." As gold was always styled in text-books of the day more widely diffused than any other metal except iron such an announcement was insignificant. An enthusiast in geology, the Rev. W. B. Clarke (resident at Sydney), also called attention in 1841 to the fact that gold was procurable

from Australian rocks. In 1844 he showed some small specimens to members of the Legislature. There is abundant evidence to support his statement that, independently, he declared that gold existed in Australia. It is equally clear that Sir Roderick Murchison, unprompted by Mr. Clarke, though at a later date, predicted the discovery. But such predictions as to a metal so commonly diffused throughout the world were like abstract speculations.[1] They are more creditable to the speculators than a practical discovery is to one who stumbles upon it; but the stumbler nevertheless, if he make it known to the public and they profit by it, is entitled to any reward due for the result.

It is worthy of remark that there were many mysterious searches for gold. Travellers might be seen exhibiting to friends small packets of glittering substance which they were carrying to Sydney, and which, if proved to be gold, would enable them to be rich for ever. Almost invariably the specimens were found to be mica. One shepherd absolutely obtained gold; but he was content with slowly picking from fragments of quartz the grains of gold he gathered throughout the year, without telling where he procured them. It was known that he picked up gold, but it was not thought that it would be profitable for others to devote their time to the search which it cost him nothing to prosecute while shepherding his master's flock, and which yielded perhaps only a small sum for the industry of months. As to the amount, the old man (McGregor) furnished no particulars, but he plied his labours for several years on the watershed to the Mitchell, a creek north of Wellington Valley.

Sir Roderick Murchison was president of the Geographical Society when Strzelecki returned from Australia to Europe. Struck by the specimens he saw, Sir Roderick lost no time in pointing out that the nature of the rocks in the Australian Eastern

[1] It is proper to remark, though it in no way weakens the argument in the text, that the sagacious Governor Gipps requested Strzelecki to keep his discovery (such as it was) secret; lest, if much gold should be found, the maintenance of discipline among the 45,000 convicts in the colonies should become impossible. Strzelecki complied. But the discovery itself as made by him was little more than theoretical. When the Rev. W. B. Clarke in 1844 showed specimens, he was aware of and expressed sympathy with Sir G. Gipps' apprehension of evil consequences from premature disclosure of the fact in the community then existing.

Cordillera, and its meridian direction analogous to the Ural chain, implied that it would be found auriferous. In 1846 he suggested to Sir Charles Lemon that Cornish miners ought to be invited to test this prophecy. In 1848 he acquainted Earl Grey officially with the fact,[1] that one W. T. Smith, prompted by Murchison's surmises, had found and sent to England a gold specimen procured "in a matrix of quartz rock" on the western slopes of the Blue Mountains. Sir Roderick suggested that the Government might cause a mineral survey to be made. Earl Grey thanked him, but nothing was done at the time. Mr. Smith, who had sent the specimen, had probably found it as McGregor the shepherd had found many; if indeed it was not one obtained from McGregor himself.

In 1853 Sir Roderick Murchison, in order to justify his claim to share the credit of the Australian gold discoveries, marshalled his predictions of 1844 and his advice of 1846 and 1848 in a letter to the Duke of Newcastle.[2] He was able to show that there had been no publication of other predictions than his own when he promulgated them, and, "in the honour of the science" he cultivated, he requested that his letter might be included amongst the Parliamentary papers.

The Rev. Mr. Clarke was able to show that he had in 1841 and in 1844 revealed his anticipations. In the former year he had "detected" gold at the "head of the Winburndale rivulet, and in the granite westward of the Vale of Clwydd." In 1843 he had freely mentioned the fact. He had then found a specimen weighing one pennyweight. In 1844 he had shown a specimen to Governor Gipps. No one appeared to regard the matter as important. Rather inconsistently with this admission Mr. Clarke remarked that—"Consideration of the penal condition of the colony kept the subject quiet, as much as the general ignorance of the value of such an indication." He found no "alluvial gold." He had not heard of Strzelecki's discovery, and as Strzelecki in his physical description (of New South Wales and Tasmania), 1845, did not mention it, Mr. Clarke was justified in treating it as unimportant.

While these scintillations of science were exhibited in the

[1] Parliamentary Papers, vol. lxiv. p. 43. 1853. Presented 16th August.
[2] *Ib.*

speculations of Strzelecki, Clarke, and Murchison, the old shepherd McGregor was almost daily picking up specimens which, if they had been made known to geologists, would have attracted the attention of the world. But he kept his secret so well that his lucrative labour drew no fellow-workmen to his side.

Amongst the many speculations, learned and unlearned, there was one so singular that it deserves to be recorded. When Mr. Latrobe was about to retire from Victoria he wrote (1853) to various colonists for information concerning their first occupation of the territory. Mr. Hepburn, a master of a small trading vessel, joined Messrs. Hawdon and Gardiner in 1836 in an overland journey from Jugiong on the Murrumbidgee. At Gundagai they met Sir Thomas Mitchell returning from his expedition to Portland Bay. They followed his track for three weeks, and diverged from it at the east of Mount Macedon to seek Batman's settlement at Melbourne. They arrived there in December 1836. Gardiner and Hepburn took possession of a run on a small stream (Gardiner's Creek) a tributary to the Yarra. They bought Hawdon's share of the cattle they had brought with them. Subsequently Gardiner bought Hepburn's share, and Hepburn and Hawdon sailed from Melbourne in a boat of about ten tons burthen through Bass's Straits to Hawdon's home near Illawarra, some miles southward of Sydney. In January 1838, Hepburn started with live stock to occupy fresh country at Port Phillip. Mr. Coghill accompanied him. At the Goulburn river they met a large party of apparently hostile natives. By carrying green boughs in token of peace they induced the natives to lay down their spears. They diverged from the path to Melbourne and followed Sir Thomas Mitchell's dray-tracks towards the Coliban river, whither Mr. A. F. Mollison and Mr. C. H. Ebden had preceded them. The latter had named and occupied Carlsruhe. The former located himself at Coliban (now Malmesbury). Hepburn went farther afield. He travelled through the broken country adjacent to Castlemaine, and reached and occupied Smeaton Hill on the 15th April, 1838. He described his journey in a letter to a friend, Mr. John Betts of Birmingham, dwelling in what he called a "rigmarole" manner upon the aspect of the country, the ranges, the rocks, and natural productions. Betts answered thus:—

"John, look closely into all the streams; dig, wash earth, search diligently for gold, for I am sure your feet are passing over immense wealth every day."[1] The use of the gold-washing cradle being unknown to Hepburn, he did not profit by his friend's advice; but the land on the tributaries to the Loddon which he had described to his friend was to yield tons of gold in 1852, and justify the prophecy of Betts. When the Californian gold-fields were discovered by chance in 1848, neither science nor accident had unveiled the treasures of Australia.

In 1849 Sir R. Murchison's correspondent, Smith, produced in Sydney a lump of gold, and offered to show the place where it was found if the Government would give him a large sum of money. Deas Thomson was not without suspicion that the specimen had been imported from California, and the man was told that "the Government could enter into no blind bargain on such a subject," but if he thought fit to trust in their liberality he would be "rewarded in proportion to the value of the alleged discovery."[2] The man declined, and no more was heard of him, until, in 1852, he ventured to apply for a reward after Hargraves had shown how gold could be obtained.[3]

In Melbourne, early in 1849, a man calling himself a shepherd produced at a jeweller's shop a lump of quartz containing about 16 oz. of gold. He said he had picked it up at the Pyrenees. He sold the gold after the jewellers had assayed it, and then, whether alarmed (as was supposed) or not, immediately departed by sea to Sydney, though the jeweller, Brentani, anxious to see the spot where the gold had been found, had entertained Chapman (as the man called himself) at his own house.

Brentani and his co-assayers fitted out a secret expedition to search for more gold. They said they found some, but they were not believed, and they never prosecuted their researches, although the distraction of colonists and labourers to California, in 1849 and 1850, caused dismay in Australia. Hargraves had, like most other persons in the colony, heard the rumours about

[1] Hepburn's letter to Mr. Latrobe quoting these words is preserved in the Melbourne Public Library.

[2] Sir C. Fitzroy to Earl Grey, 11th June, 1851.

[3] Parliamentary Papers, vol. lxiv. 1853. Sir John Pakington referred Smith to the Colonial Government through which, and not through an "indirect channel," he ought to have applied.

gold in former years, but they did not prevent him from migrating to California in 1849. In the following year he returned to prove whether with the spade, the pick-axe, and the wooden cradle, he could eliminate gold from alluvium in Australia, as he saw it procured in America.[1]

On the 12th February, 1851, he succeeded in a private experiment. In April, he applied to Deas Thomson for a reward. Requested to state his claim in writing, he asked (3rd April) for £500 as compensation for the "great hardships, expenses, and exercise of skill," during the past. He would then show the site of his discovery, and "would leave it to the generosity of the Government" to make an additional reward commensurate "with the benefit likely to accrue to the Government and the country." The offer made to Smith in 1849 was repeated to Hargraves,[2] who, after three weeks' deliberation, accepted it, and declared the gold-bearing localities to be "Lewis Ponds and Summer Hill Creeks, Macquarie and (unnamed) rivers" in the Bathurst district. It must be remembered

[1] At a later date there was some controversy between Hargraves and a Mr. Rudder, whom he had seen in California, and who claimed credit for the idea of digging for gold in Australia, on the ground that they conversed on the subject in California before Hargraves returned to make an experiment. After the experiment was successful there were many claimants for the honour of revealing the mineral wealth of Australia. Hargraves communicated his success to Rudder in Sydney. Rudder in a pamphlet published in 1861 (Sydney) made light of Hargraves "practical demonstration" as "only a matter of time, since any other returned digger from California could have done the same and probably much more than Mr. Hargraves effected on his *first* visit to Summer Hill." Rudder may have been right, but Hargraves was nevertheless the returned digger who "showed Australians how to wash gold-drift."

[2] Persons named Tom and Lister put forward quasi-claims as discoverers. Hargraves had received assistance from them in conducting his first experiments with a cradle at Lewis Ponds and Summer Hill in February 1851. A Select Committee (New South Wales) recommended (1853) that they should receive £1000 for their labours, but reported that Hargraves was entitled to be regarded as "the first discoverer of the auriferous wealth of the colony," to which he had returned "for the express purpose of searching for gold." Wentworth was chairman of the Committee. Hargraves stated in his evidence before it that during his first interview with Deas Thomson the latter said, "If what you say is correct, Mr. Hargraves, we have got a gold-field. It will stop the emigration to California and settle the convict question."—New South Wales Legislative Council Papers. 1853.

that in courting discovery of gold in 1849 and 1851, the Government were impressed with the idea that the colony was in danger of losing its population, which was then attracted to California.

The timely application of Sir Charles Fitz Roy had procured the presence of Mr. Stutchbury as Geological Surveyor. Hargraves showed the sites to him, and he was able to report on the 14th May, 1851, that the discovery was real and practical. While Stutchbury and Hargraves were together other persons scented the prey, and Stutchbury, on the 19th May, wrote that on the Summer Hill Creek there were four hundred people of all classes gathered within a mile. It was like the first spark of a conflagration. Sir Charles Fitz Roy reported that to have prevented people from going to the gold-fields would have been impossible even if he "had ten times the means" at his disposal, but he could, he thought, undertake that the peace of the country would be preserved by the regulations made. Some persons had suggested that martial law should be proclaimed and "all gold-digging peremptorily prohibited," but the wiser Governor was persuaded that it would have been as futile "as to attempt to stop the influx of the tide." His regulations, in the framing of which Deas Thomson, as usual, exercised paramount influence, were promptly made. Police-officers were despatched to the spot and provided with authority to engage additional constables.

The Attorney-General was absent on circuit, but the Solicitor-General, Manning, with Mr. Edward Broadhurst (whose reputation at the bar was second to none in Australia) were called upon for an opinion as to the rights of the Crown. They gave it on the 20th May, and on the 22nd a proclamation was prepared declaring that all persons removing gold without authority would be prosecuted, and that regulations would speedily be promulgated, with the terms on which licenses to search for gold would be granted "on the payment of a reasonable fee."

On the 23rd May, Mr. J. R. Hardy, the police magistrate at Paramatta, a clever and active man, was appointed Commissioner of Crown lands for the gold district, and regulations were issued, fixing £1 10*s.* per month, payable in advance, as the fee for a license to be formally issued by a Commissioner to each

person seeking for gold. The amount was to be liable to future adjustment. Assistant Commissioners were soon required, for gold was speedily found on the Turon river, and other tributaries of the Macquarie river. Mr. W. Essington King, a grandson of Governor King, was one of them, and by his tact and discretion earned the praise of all men.

At Ophir on the Summer Hill Creek, and at Sofala on the Turon, hundreds rushed to dig with or without licenses. The road over the Blue Mountains, discovered with so much toil in 1813, was lined with a motley crowd of men, women, and children, trooping with laborious haste to the gold-fields. The excitement spread to Victoria, and there were fears lest all ordinary labour should be abandoned. To arrest the exodus from Melbourne, it was resolved at a public meeting (in June) to offer a reward of £200 for the discovery of a gold mine within 200 miles of Melbourne. William Nicholson the Mayor, Messrs. Westgarth, O'Shanassy, Fawkner, Grice, Dr. Greeves, McCombie, and other prominent men of the time were appointed as a Committee of superintendence.

Mr. William Campbell of Strath Loddon, who was afterwards for many years a member of the Legislature of Victoria, had actually found gold in March (subsequent to Hargraves' first success) at Clunes, on the station of a friend, but from prudential reasons abstained from making known his discovery except to his friend. When the world around him was frantic and prone to rush to New South Wales rather than not scrape for gold, Mr. Campbell informed the public. Gold was also found at the Plenty river, and at Anderson's Creek, tributaries of the Yarra river. Other discoveries were made at the Pyrenees and elsewhere, but all were overshadowed by the finding of gold at Buninyong in quantities which attracted diggers, who, on the 8th September, 1851, encountered the mineral treasures of Ballarat, and put an end to apprehension lest the gold-fields of New South Wales should draw away the thews and sinews of Victoria.

Mr. Latrobe in August imitated the proclamation issued in Sydney in May, to protect the rights of the Crown; and copied also the regulations with regard to licenses. In September licenses were issued to the gathering crowds at Ballarat, and

Mr. Latrobe with his customary activity rode to the spot, and made those observations which render his despatches as trustworthy as they were notable for their ability.[1] In six days 1300 licenses were issued for the month of October, and it was clear to Mr. Latrobe that the comers were to be counted by thousands rather than by hundreds. In October the discovery of the gold-fields near Mount Alexander seemed to rival in importance that at Ballarat. Mr. Latrobe's difficulties were greater than those in New South Wales, where, except for a short time at the Turon, many thousands were not gathered together,[2] and no one of the capacity and experience of Deas Thomson was at hand to advise him. The very rashness with which the people had hurried to the Bathurst gold-fields produced immediate though not general re-action in New South Wales. All strong men were not equally fortunate in finding gold. Weak men who were unfortunate desponded under the conditions of their dirty and unprofitable toil and its concomitant hardships.

In August, while hundreds were struggling to reach the gold-fields, some scores might be seen wending their way back to the homes which they had deserted a few weeks before, although in July fresh fuel had been added to the fire by the published accounts of the finding of three masses of mingled gold and quartz weighing more than 100 lbs. An Australian black, educated at the Wellington Valley Mission Station, was employed as a shepherd by Dr. Kerr. He amused himself by looking for gold as he followed his sheep, and with a blow of a tomahawk disclosed the gold embedded in a mass of quartz lying on the surface of the ground at the Meroo Creek, a tributary of the Macquarie river, about fifty miles from Bathurst. He told his master, who hurried to the spot and eagerly broke the largest mass[3] into fragments to facilitate the removal of the prize. He carried the fragments, with others, to Bathurst with all speed, and there

[1] They were commended on the latter ground in the columns of the London 'Times.'

[2] Moreover at the Turon the population was dispersed along the course of the river for very many miles.

[3] It weighed about 75 lbs. and contained 60 lbs. of gold encased in weather-worn quartz.

found that the pure gold weighed 102 lbs. 9 oz. The local newspaper (16th July) declared:

"Bathurst is mad again. The delirium of golden fever has returned with increased intensity. Men meet together, stare stupidly at each other, talk incoherent nonsense, and wonder what will happen next. . . Since the affair was blazoned to the world several gentlemen of our acquaintance have shown undoubted symptoms of temporary insanity . . . should the effect be at all proportionate in Sydney to its population, the inmates of Bedlam Point may be fairly reckoned an integral portion of the community."

Mr. Hardy, the Gold Commissioner, seized the gold as Crown property; it had been taken by an unlicensed person. The holders entered into a bond to pay not more than 10 per cent. as a royalty if demanded, and Sir Charles Fitz Roy asked Earl Grey to remit the bond, as the rights of the Crown had been protected. Sir Charles Fitz Roy wrote (17th July): "What effect this fresh cause of excitement may have upon the public mind it is impossible at this moment to foresee, but the excitement is now very great in Sydney." But for the proportion of failures, which drove away the desponding, the Bathurst editor's prognostications might have been realized. Three school-teachers, at Bathurst and the contiguous Kelso, fled from their task to the gold-fields. As the schoolmaster's office was ill-paid, it could secure only inferior persons in some cases, and their defection could not be wondered at. But not only ill-paid functionaries were drawn into the vortex. Barristers, attorneys, medical men, merchants, shop-keepers, artisans, brick-makers, labourers, sailors, mingled in the throng.

The proximity of Ballarat and Forest Creek to Melbourne, as compared with the remoteness of Ophir and the Turon or the Meroo from Sydney, rendered it easy to reach the Victorian gold-fields, and they were so prolific that they yielded greater temptation and larger profits to the collected crowds. What would have been the fate of Victoria if the discovery in New South Wales had not preceded that in the new colony it is hard to tell. For a time each step of her neighbour was followed by Victoria, and it was not until he ventured upon an experiment, that Mr. Latrobe made a blunder of which he

never shook off the evil effects. But it was easier to allot the gold districts of New South Wales to Commissioners than to allot those of Victoria. It would have required several extensive tracts of widely separated gold-fields in the older colony to receive the scores of thousands who in a few months scrambled amongst the gullies and hills within a few miles of Mount Alexander.

A peripatetic officer had little difficulty in issuing licenses to a small population whom he could visit during the month, and who were bound to produce their license on demand. With a large population the facility for evasion and the difficulty of detection were increased. The officer or trooper who demanded the production of a license once in the month had no need to repeat his question amongst those whom he generally knew by sight. In a throng of thousands the demand might be repeated often, and the digger was offended. An imperious demand provoked a surly answer, even from a man who held his license. If the license could not be produced the defaulter was haled away to be dealt with by law, and men were to be seen chained outside out of "the camp" (as the Commissioner's abode and surroundings were unwisely called), awaiting inquiry and sentence. There were exceptional cases in which common sense and courtesy averted the natural consequences of such a system. Its inherent evils were aggravated to a dangerous pitch in Victoria, where the multitude of diggers and the relative paucity of officials suggested the idea that an armed band acted not as servants of the public, but as masters of a disaffected and subject population.

After various premonitory outbursts the spark which kindled the smouldering elements of disorder, prepared under the government of Mr. Latrobe, was supplied accidentally by a wretched subordinate, when at Ballarat a corrupt magistrate notoriously endeavoured to shield a criminal. His prompt dismissal by Sir Charles Hotham was ineffectual to prevent designing persons from goading the excited crowd to insurrection, and it required the moral and military vigour of the Governor to quell a disturbance, which, if Mr. Latrobe had possessed like qualities to Sir C. Hotham's, might never have arisen.

It is needless to particularize all the various regulations enacted in New South Wales, but a few may be mentioned. After the discovery of the mass of gold at the Meroo,[1] it was notified that a royalty of ten per cent. would be charged on gold found in the matrix on Crown land, and five per cent. on that found on private land. Numerous applications were made for leases of blocks of land in the auriferous districts, and the wary Deas Thomson himself visited the gold-fields in order that he might study how to guard the public interests. The Legislative Council was not to assemble until October, and the task of making and enforcing regulations was, under the existing law, one which fell upon the Executive. A rough method of apportioning duties was adopted by assuming that in addition to the general oversight of the capable Hardy (the Chief Commissioner) there should be, at each gold-field, an Assistant Commissioner, a clerk, and ten mounted policemen for "every thousand licensed diggers." Gold-seekers were at work in 1851, at the Abercromby Ranges between Goulburn and Bathurst, as well as at Araluen, near Braidwood. The Rev. W. B. Clarke was employed in independent search for remunerative gold-fields, while Mr. Stutchbury furnished periodic reports on the same subject, and the Surveyor-General himself was specially consulted. It was soon found that for all scientific purposes the services of Hargraves were worthless, and they were dispensed with.[2]

On the 7th October, the area of claims to be marked out for licensees to dig for alluvial gold—the voiding of such claims by non-usage—the limitation of amount of license-fee for working on private lands to half the amount of that upon Crown lands —the area of claim (half a mile of, and in the course of, a vein) allowed for mining on quartz veins, ten per cent. being payable

[1] Earl Grey acted on Sir Charles Fitz Roy's advice, and remitted the royalty imposed on this mass, the conduct of the holders having been "open and honourable."

[2] A Parliamentary Paper shows that £530 were paid to Hargraves at an early date as a "gratuity for his services in pointing out the gold-fields in the Bathurst District." He was also made a Commissioner for exploration of gold districts, and visited Victoria in 1852. In that year Sir Charles Fitz Roy advised (Sir John Pakington consented) that the gratuity to Hargraves should be raised to £5000 in the whole (he had already received £1000 in three instalments), and that his services as a Commissioner of Crown Lands should be discontinued.—Parliamentary Papers, vol. lxiv. 1853.

as royalty to the Crown—the mode of forfeiture of such claims —the fixing of the royalty for quartz vein mining on private lands at five per cent.—were dealt with in one notification. The price of gold was dealt with. Some anxiety as to the value of the crude gold was felt. Buyers mysteriously averred that until the value should be tested at the Bank of England it was dangerous to assume a value approximating to the standard accepted there. A new kind of commercial traveller sprung into existence. Astute speculators employed active persons who roamed over the gold-fields, giving as little more than £2 an ounce as possible.

An official notice[1] (21st October) announced that the gold received by the Government in payment for license-fees would be valued at £3 per ounce for "alluvial gold, or gold obtained by separation only," and £2 8*s.* per ounce for "gold obtained by amalgamation." The bolder speculators, whether bankers, merchants, or others, who bought at the rates thus established (and the diggers, scattered among hills and gullies, demanded no more, sometimes less, than the Government price) made rapid fortunes before advices from England proved that much higher prices than had prevailed in the colony would yield a margin of profit to buyers.

The disturbance of prices and of wages in New South Wales was not so immediate as a theorist might have expected. In the immediate neighbourhood of the gold-fields men left their previous service when its term had expired, but there was no general abandonment or breach of engagement; although there was sufficient absconding to excite alarm, especially near the gold-fields. Moreover, kind-heartedness and good-fellowship prevail among what are called the lower orders to a degree unknown by those who have not seen much of them. A traveller seeking employment on a station would, and did—for some time after the rate of wages had risen at and near the gold-fields—agree to work at the rate prevailing on the station; and this he did, not as a concession to his new master, but from unwillingness to slight his fellow-workmen by stipulations which

[1] On the 17th October, 1851, a Board appointed to open the tenders for gold in the hands of the Government reported that the highest price tendered was £3 4*s.* 3*d.* an ounce.

would lower their position or self-respect. In time, like a circle in a pool, the wave of disturbance spread to the remotest bounds of the colony. One of the first employments to feel the pressure was that of carrying goods. From £2 10*s.* to £30 per ton the rate of carriage to the gold-fields rose rapidly.

It may seem strange that any men could be found to act as constables amid the excitement of the gold-fields. Yet while enrichment beyond the bounds of former dreams was grasped by the fortunate, a sergeant received (with provisions) only three shillings and ninepence, and a trooper three shillings and threepence per day, at the Turon in 1851; while thousands of eager diggers were moiling in the dirt which yielded gold. It is true that, being on the spot, they saw the miserable failures of the unlucky; but it was not that alone which made them loyal. There was a sense of honour. Some of them had served in the fine body of men who, when drafted from regiments of the line, formed the mounted police of the colony. That corps had in 1847 received a deadly blow at the hands of a Select Committee, of which Mr. Cowper was chairman. A second body of mounted border police,[1] which had been formed in the squatting districts, had previously been abolished, and petty sessions had been formed near the abodes of the Crown Land Commissioners, and at other places where population was gathering. Mr. Cowper proposed to reduce the number of mounted men and increase the number of dismounted men in the force, which had been, since the time of Governor Brisbane, the terror of evil-doers and the welcome guests of all honest men.

Witnesses before the Committee abetted his unwise proposal. The districts were so orderly that they thought the corps might be dispensed with. Regretting that other evidence prevented him from getting rid of the corps, Mr. Cowper prepared a lengthy report, advocating its reduction. It was seriously weakened when the discovery of the gold-fields made the loss of its services a public calamity, and about ten years afterwards the

[1] Many of this body were very inferior to the regular mounted police. It is fair to say that somewhat less care had latterly been taken with regard to the intelligence and capacity of the soldiers admitted to the latter body. After they had reduced their districts to order, the careless public hardly appreciated their value.

revival of bushranging in the settled districts of the colony made men remorseful when they remembered that the Legislature had destroyed the efficient protection which had so long preserved order. After bringing up his report Mr. Cowper carried a resolution requesting the Governor to take it into favourable consideration. The request was complied with. The disbanded men pursued private occupations—the routine of regimental duty being distasteful to most of them after their roaming life in the bush—and only a few of them were available when the gold-fields made their services precious to the country.

The management of the New South Wales gold-fields had been prosperous when the Legislative Council met in October 1851, and the measures adopted by the Executive Government at a moment's notice, in unexampled exigencies, were virtually ratified by the Legislature. Even Dr. Lang was impotent to disturb the existing order; although, according to his custom, he availed himself of a visit to the Turon, to stir up ill-feeling. He had just been returned at the head of the poll as member for Sydney, and the turbulent spirits at Sofala on the Turon welcomed him as their chief. In preaching to them he denounced the Electoral Bill (of 1851) as an act of the grossest injustice perpetrated by unprincipled men (Deas Thomson, Wentworth, Latrobe, &c.). But "the star of freedom" had arisen. On the 6th October some assembled miners presented an address urging him onward in battling with "hypocritical leaders of a base and grovelling faction of obstructionists," and promising him "a distinguished place in history." He informed them that the discovery of gold could not fail to hasten "our entire political freedom and national independence," and promised to promote their welfare in the Legislative Council. It has been seen that prudential considerations restrained him from declaring that he was possessed of the property qualification required by law, and he did not take his seat. The discontented miners at the Turon applied to Mr. Holroyd, the member for Bathurst, to redress their grievances. They objected to the necessity to take out a license before digging for gold. They called the fee a tax on labour. They said they were harshly treated in various ways. Mr. Holroyd, in stating their case,

alluded to the public meeting held when Dr. Lang visited the Turon. Deas Thomson was cheered when he retorted that it was with regret that he found that "the chief mover was a reverend agitator, who, forgetting the principles of his holy vocation, endeavoured to raise discontent and discord where there was nothing before but peace and contentment, and willing obedience to the regulations."

It is to be regretted that Deas Thomson (spurred by the fact that amongst the limited numbers residing on the gold-fields in New South Wales license fees were collected with comparative ease) defended a mode of obtaining revenue which, though practicable there, was to be found impossible at the crowded gold-fields of Victoria. The individual exaction of a royalty in place of a fee was, as he truly contended, an impossibility; but the exaction of a duty by way of royalty, which was easy at the port of shipment and could gall no man, was not discussed. Wentworth disposed of the objection that the license fee was a tax by saying that it was a gross misnomer to call that a tax which was not compulsory, and that the Crown had a right to protect the public property from pillage. Mr. Holroyd did not risk a division, and withdrew his motion for a Select Committee. Although Mr. Holroyd yielded for the time, his, or rather Dr. Lang's, clients, were not content. In the following session the Legislature passed an Act to regulate the gold-fields and preserve order thereat. Lord Derby's Ministry was not supine or slow to appreciate the exigencies of the colonies. Sir John Pakington by a despatch of 2nd June, 1852, instructed Mr. Latrobe to place the gold revenue (after securing any permanent charges already made upon it) "at the disposal of the Legislature for their assistance in providing for the service of the colony," and he sent a copy of his instructions to Sir Charles Fitz Roy. It is to be lamented that one suggestion in the despatch did not find prompt acquiescence in the Sydney Legislature. "It will be for the Legislative Council to fix the amount of fee at which licenses should from time to time be granted. It will be for them in addition to take into consideration the propriety of raising a revenue from the mineral produce of the colony either by export duty on gold, or by royalty, or in any other manner which local experience may suggest." If the Colonial Legislatures

had mutually agreed to levy the royalty on gold in the shape of an export duty, there might have been no riots on the gold-fields in either colony. The emergency was not so great in New South Wales as in Victoria. The members of the Sydney Legislature were perhaps excusable for some blindness to the dark clouds in the far South. The vacillating conduct of Mr. Latrobe's government at that period may have affected the consideration accorded to it in Sydney. Sir John Pakington's despatch was considered by a Select Committee. Mr. James Macarthur was chairman. Three reports were made, and the result was a resolution to adhere to the licensing system, which was embodied in an Act. A lurking sense of danger, likely to accrue from an influx of foreigners unimbued with respect for English law, was shown in a clause which exacted from aliens a double amount of royalty or fee.[1] Regulations were at once framed under the Act, defining the manner in which, whether in searching for alluvial gold, working auriferous tracts with machinery, or working auriferous quartz veins, licensees were to act. A royalty of 5 per cent. was imposed on gold taken from private lands. It was 10 per cent. on Crown lands in cases where the royalty was substituted for the monthly license on "auriferous tracts." The position of the pastoral tenant was to be molested so far only as might be reported by the Commissioner "to be desirable for securing to the licensed miners the undisturbed prosecution of their employment." The Act gave power to the Governor to suspend any lease or license for pastoral purposes in this manner, and secured compensation by arbitration under Earl Grey's land orders of 1847. Sir Charles Fitz Roy and his advisers had been accused of unduly favouring the squatters in their avocations. They now took ample power to promote the

[1] Letters of denization were easily obtainable under a local law, and denizens were "to be considered British subjects within the meaning of the Gold Regulations." The Gold-field's Management Act was passed 28th December, 1852. Its preamble was: "Whereas Her Majesty Queen Victoria has been graciously pleased to place at the disposal of the Governor and Legislative Council of New South Wales, for the public service of the colony, the revenues to be derived from the gold mines and gold-fields thereof, and to authorize the said . . . to determine with Her Majesty's assent the mode of raising a revenue from the said gold mines . . . and the amount of fees and royalties to be paid upon the working thereof," &c.

avocation of the gold-digger. In one of his numerous reports the Rev. W. B. Clarke pointed out that the widely-scattered deposits of gold in New South Wales were a greater boon than rich fields upon which enormous population could cluster. He was right. The efficiency of Governor Fitz Roy's advisers, his sufficient firmness, and the comparatively small population congregated at any one place in New South Wales, enabled him to cope successfully with his difficulties. But it is improbable that under the license system he could have maintained permanent order in Victoria. Though the license fee was no more a tax than is the charge which the owner of a marble quarry makes when he disposes of his marble to those who quarry it, it was nevertheless a Government impost, and by the very manner of its collection savoured of the most irritating traditions of English history. It was raised like a poll-tax; and it was raised at the point of the sword, or the barrel of a pistol. There were, moreover, evil spirits abroad. From California came wild men, the waifs of societies which had submitted to or practised Lynch law. The social festers of France, Italy, and Germany, shed exfoliations upon Australia. The rebellious element of Ireland was there. The disappointed crew who thought to fright the British Isles from their propriety in 1848 were represented in some strength. The convict element in Australia completed the vile ingredients. Though the prospect was worst in Victoria, it was not without menace in Sydney. To strengthen the arm of the law Mr. G. R. Nichols introduced a Bill to regulate the carrying of fire-arms and offensive weapons, and Sir C. Fitz Roy assented to it. The riotous rascals who had returned from California with contempt for authority found themselves liable to two years' imprisonment with hard labour for unruly demonstrations with fire-arms whether loaded or not. Mr. Nichols, an able lawyer, was a native of the colony. He had in old times been a supporter of Wentworth in demanding constitutional rights. Like him he now opposed licentiousness. Yet even amongst the comparatively small crowds congregated at the Turon gold-field preparation to resist the law was made in 1853, by those whom Dr. Lang had urged to independence. Before the Act of the Legislature came into operation (1st February, 1853), an armed body of 400 men were reported to be ready at the Turon to resist the enforcement

of the law made by those whom Dr. Lang had denounced as unprincipled. The Government despatched half a company of the 11th Regiment to the spot, and strengthened the police force at Sofala. The ringleaders shrunk from an encounter. Sir Charles Fitz Roy commended the "prudence, firmness, and temper" of the Commissioners.[1] He told the Secretary of State:

"It was my obvious duty in the first instance to vindicate the law, but, that having been done, it was impossible to deny that some of the clauses in the Act, in accordance with which the Regulations had been framed, were of a more stringent character than the original regulations of the Executive Government, and that they might not unjustly be considered harsh, if not oppressive."

He submitted an amending Bill to the Council in May 1853, and that body undertook to consider it with a desire to assert and maintain "the reciprocal rights of the public on the one hand and of the gold-seeker on the other." The number of licenses to dig for gold was less than 12,000 at that date, but 800 licenses to traders at the gold-fields (at thirty shillings a month) raised the total to 12,365. The gold known to have been exported on the 31st March, 1853, was 1,176,370 ounces.[2] If a royalty equal to two shillings and sixpence an ounce had been levied on exportation at the Custom House, the gold revenue would have been £147,000. The amount obtained was much less, and the expensive method of collection more than destroyed its value. If no official staff except that required to administer justice between Her Majesty's subjects had been maintained at the gold-fields, the resident officers would have been respected

[1] Mr. Hardy, an outspoken man, whose satirical power had given offence, was no longer Chief Commissioner. The Legislative Council, on the recommendation of the Select Committee on the management of the gold-fields in 1852, declined to vote a salary for the office, and it expired on the 31st December, 1852. The Committee reported that Mr. Hardy's views as to the "right of the colony to the gold-fields" rendered his retention in office improper, whatever might have "been the zeal and attention displayed by him at the first discovery of the gold-fields."

[2] The Bathurst gold-fields maintained their pre-eminence at that date; but the Southern gold-fields, including Araluen and Adelong, yielded much gold; and the Northern gold-fields, which the Rev. W. B. Clarke had examined, were of sufficient importance to be supplied with an escort for their produce from Tamworth, near which rising township on the Peel river were the Hanging Rock gold-fields.

and often beloved. Looked upon as tax-gatherers they shared the proverbial fate of the class. The Sydney Legislature was prompt to see the advantage which would accrue from the establishment of a Mint, of which, if it could be procured without delay, one of the first effects would be to create a sufficient currency without the cost or delay of importing it, and to abrogate the high rate of exchange which in every branch of commerce militated against producers.[1]

In December 1851, an address to the Queen was adopted, on the motion of Mr. Darvall. Sir Charles Fitz Roy thought the boon so entirely without precedent in colonial "history" that he made no comment on the Address. But there were in London friends of the colony whose minds were in less doubt. They represented the matter to Earl Grey. The Lords of the Treasury called upon Sir J. F. W. Herschel, Master of the Mint, for a report, which was promptly made. Earl Grey, apparently unconscious of the immediate advantages which would accrue to the colony, was "upon the whole inclined to believe that the advantage would be on the side of exporting the gold uncoined." He saw that "when the circulation of the colonies" might be "once fully supplied" there would be "little demand there for sovereigns;" he did not see the enormous waste incurred in importing coin in the first instance, nor did he appreciate the worth of the stamp of the Mint in subsequent periods. He told the Governor that the establishment of a Mint was of "doubtful expediency"; but he would be prepared to take the necessary steps if, after consulting the Executive Council, Sir C. Fitz Roy should recommend them. The Executive Council thought the Mint would be of "the greatest advantage." Sir C. Fitz Roy, in August 1852, earnestly hoped that Earl Grey's promise would be acted upon. The Legislative Council supported him by an Address in the same month. If Sir John Pakington had retained office a little longer, he who so promptly handed over the gold revenue to the colony would have lost no time in giving

[1] Against shipments of ordinary produce the rate upon drafts was 8 per cent.; against consignments of uncoined gold 12 per cent. discount.—Executive Council Minute. Sydney. (*Vide* Parliamentary Papers, vol. lxiv. 1853.) The effect of such rates upon local values hardly requires to be pointed out, although Earl Grey could not see it.

quickly what was depreciated by delay. But Lord Derby lost office in December 1852, and the Duke of Newcastle succeeded Sir John Pakington at the Colonial Office. Under his weak though not scrupulous hand the necessary Order in Council was not prepared until August 1853, and the Mint was established, too late to avert the pecuniary losses of two years, but in time to effect permanent good. Rather unwisely, Victoria, jealous of the possession by the mother colony of an institution not enjoyed by the daughter, obtained a branch of the Mint many years afterwards, when it was deemed doubtful whether the cost of the esablishment would not exceed any possible profit from it. The Legislative Council of Victoria asked for a branch in July 1852; and South Australia, although she had met her most urgent need by her Bullion Act in the beginning of the year, asked (October 1852), for a branch of the Mint in order to obviate the necessity of exporting bullion to be converted into coin for her own use. The Lords of the Treasury recommended in March 1853 compliance with the prayer of New South Wales, that colony having made necessary remittances to defray the cost. They intimated at the same time that they saw no objection to the establishment of Mints in other colonies under general conditions deemed advisable. The efforts to procure a Mint elsewhere than in New South Wales did not assume a practical shape until the Imperial Statute (26 and 27 Vict. cap. 74) had in 1863 enabled the Queen to declare the coin of the Sydney Mint a legal tender within the United Kingdom. The legislature of Victoria thereupon prayed for the establishment of a Mint in Melbourne, and after delays caused by imperfect preparation of the necessary Bills an Act was passed in 1867, providing permanently for the expenses of a branch of the Royal Mint in Melbourne,[1] at an annual charge not exceeding £20,000 a year.

Although the emergencies of Victoria mainly drew forth the despatch by which the gold revenues were placed at the disposal

[1] The Mint was opened in June 1872. At the end of eight years it had coined more than £15,000,000 sterling. Its receipts had been £61,000 in that period. When its advocates found their predictions (that it would be directly lucrative) falsified by facts, they contended that its indirect and unseen advantages were great. Amongst them were the withdrawal of worn silver and copper coins, which was effected at Imperial cost.

of the Colonial Legislatures, the Legislative Council in Sydney had in 1851 taken a step which would eventually have made a decision necessary upon the point. The Committee of Supply was instructed not to vote from the general revenue any expenditure originating in or connected with the discovery of gold, on the ground that such expenditure "ought in justice to be borne on the territorial revenue." The Government obtained eleven votes against twenty-five in resisting the Instruction. Their official phalanx of nine was only augmented by two unofficial nominee members. Sir C. Fitz Roy withdrew the charges objected to; paid them out of the territorial revenue; informed the Legislative Council that he had assumed the responsibility; and received the approval of Sir J. Pakington. A Governor who knew how to be firm but preferred to be conciliatory, and who did not shrink from responsibility, was not likely to be generally unpopular, although the hoarse crowd which abetted Dr. Lang could always be stirred to take part in girding at Sir C. Fitz Roy, or at any other Governor. After the prorogation Sir C. Fitz Roy journeyed to the southern and western gold-fields, and received loyal addresses from the residents, who thanked him for the measures by which good order had been maintained under "unexampled circumstances." He affably rejoined that "the peaceable and orderly conduct of the miners themselves" had conduced to the happy result.

It was convenient to allude to the first discovery of gold in Victoria in connection with the discoveries in New South Wales. But the consequences were more momentous in the former. A richer and compacter territory—larger treasuries of gold stored nearer to the sea-board—a smaller population with less power to absorb in any wholesome manner the crowding immigrants—the occupation, under pastoral license or lease, of millions of acres which those immigrants saw and lusted for—were elements with which the wisest might have shrunk from dealing. The procacious community of Port Phillip was overwhelmed with a new population, greedy, adventurous, and much of it prone to be unruly. Dangerous ingredients were poured across Bass's Straits from Tasmania.[1] That colony, saturated as it was with

[1] In 'Experience of Forty Years in Tasmania" (London: 1859), Mr Hugh M. Hull, Clerk Assistant of the House of Assembly, Tasmania, wrote:

convicts and freed men, discharged in three years a horde of men almost equal in amount to the number who were resident in Port Phillip in 1850. They were themselves infinitely outnumbered by other immigrants,[1] but they infused a debasing spirit amongst their associates. Dissipation of the most repulsive kind was their enjoyment, and until they destroyed themselves by their excesses the gold-fields supplied them with ample means. So abundant was the gold that it was averred that any able-bodied man might earn from twenty to forty pounds sterling weekly by washing surface gold in a cradle at Ballarat. No sooner had the reputation of that place been established than fresh discoveries at Castlemaine diverted the eager crowd. More than twenty thousand were assembled there before the end of the year, and the magnet of attraction in a short time drew larger numbers soon afterwards to Sandhurst. The recorded export of gold in 1852 was 2,738,484 ounces, and in 1853 it amounted to 3,150,021 ounces. Had the Government been wise it would then have sought, by imitating the example of New South Wales, to make large reserves to meet not only the immediate but the prospective wants of the community thus precipitated upon the land. It would have laboured to settle on the soil[2] at least the most industrious and home-seeking of the new-comers. Mr. Latrobe would gladly have done so: but, as already pointed out, he informed the Secretary of State (September 1852) that "the law officers of the Crown in this colony profess to be quite at a loss to apprehend the manner in which the formation of the reserves alluded to . . . can be held justified . . ." He strenuously warned the Secretary of State. He visited laboriously, but modestly, the various gold-fields. His

"In the three years succeeding the gold discovery in Victoria in 1851 no less than 45,884 persons, principally men, left Tasmania for the uncertain employment of gold-digging." It is probable that some of them must (after a return to the island) have been reckoned more than once. It has been seen in the preceding chapter that it was not until the end of 1855 that the name of the island was changed from Van Diemen's Land to Tasmania, but after recording the fact with its date it seems convenient to use the new style in succeeding chapters.

[1] In 1852—1856 the total immigration to Victoria is recorded as 336,957, or more than four times the number of persons in the province in 1850.

[2] The Government would not allow the gold-digger to grow vegetables on Crown lands. Thus the inherent vices of his calling were intensified.

Attorney-General, although unapprehensive on the land question, worked heroically in his own department, and in generally advising the upright Governor who reposed so much confidence in him. It was by the graphic and urgent representations of Mr. Latrobe that Sir John Pakington was induced to offer to the colonies oppressed by a reckless immigration, the control of the revenues derivable from gold. In October 1851, the first wild rush had been made to the gold-fields at Ballarat, and the intelligent Governor drew a startling picture. Melbourne, Geelong, and their suburbs were like deserted cities. It was believed that in places once populous not a man was left; and men, heads of families in good social position, might be seen carrying water from the river, because neither for that nor for other household needs could servants be hired, and the former supply by water-carts had ceased. Farmers, artisans, and all day-labourers had fled to the gold-fields,[1] "in most cases leaving their employers and their wives and families to take care of themselves." The ships in the harbour were in a great measure deserted. All contracts for works were arrested. No workmen were to be found. No contract could be insisted on. Harvest was approaching; the shearing season was at hand. Embarrassment prevailed in all men's minds. "Some would wish to see Government decline to sanction the issue of gold licenses, and to forbid[2] the working at this season of the year till the shearing and harvest are over." Earl Grey would see that such a course was impracticable.

Promptly, in order to retain some persons at least in the public service, a temporary increase of pay (about 50 per cent.) was sanctioned, in anticipation of the consent of the Legislative Council then about to meet. There was little prospect that vessels would find crews for an outward voyage, and Mr. Latrobe added: "I write this despatch without any certain expectation of the time or manner in which it may reach your lordship, as

[1] One man who had saved £100 more than sufficed to equip him for the gold-fields went to a pawnbroker whom he knew, in order to pledge his money. The pawnbroker pointed out that he might obtain interest for it instead of paying for its custody. But the man was resolute, and pawned his cash, which he returned to redeem, and insisted on paying for as though he had received an advance upon it.

[2] More than one elaborate recommendation of this kind reached Mr. Latrobe.

there appears no direct mode of communication with England either from this port or New South Wales at the present juncture."[1] In another despatch a geological surveyor was urgently asked for. The discovery of the Mount Alexander gold-fields was depicted. The active Governor rode to the spot, and saw several pounds' weight of gold quickly scraped together by two or three persons. On his return to Melbourne he found renewed excitement.

Then flowed back to Victoria the stream of population which had previously run to New South Wales, and it was swollen by adventurers from that colony. Then poured in the foul draught from Tasmania. And then Mr. Latrobe was advised to take a step which it was impossible to take, and the abandonment of which, after it was proposed, created a perpetual stumbling-block in the path of Government. The Legislative Council, more anxious to exhibit its new authority than considerate towards the country or the Governor, declined (on the 26th November, on the motion of Mr. H. Miller) to sanction any expenditure from the ordinary revenue on account of services which might be, in its own opinion, consequent upon the discovery of gold. This was similar to the step taken in Sydney, upon which Sir C. Fitz Roy withdrew his estimates and assumed the responsibility of paying the increased charge from the territorial revenue. But the members of the Victorian Council had not calculated the cost. They shrunk from applying the principle when they found it might be inconvenient. Mr. Latrobe sent them another message, and only a minority adhered to the refusal to increase the estimates. Mr. Westgarth, one of the minority, deplored, in a published work, an increased grant for the Post Office—"a risk to the social necessities outweighing a political object."[2] . .

[1] Written on the 11th October, 1851, the despatch reached the Colonial Office on the 5th April, 1852.

[2] The 'Argus' complained that Mr. Ebden (who obtained the vote, maugre the resistance of Westgarth, Miller, O'Shanassy, and Fawkner) had been "crafty and plausible" in compiling the estimates. Ebden told the opposition that he "was in as good a position to give his vote for the benefit of the colony as any member on the other side of the House." The vote was carried by 15 against 11. The 'Argus' declared that it was disgraceful to the House, the Government, the colony, and still more to the successful majority.

But Mr. Latrobe's advisers soon proved that they were not as wise as Sir C. Fitz Roy's. They thought the amount of the license fee disproportionate to the gold-digger's earnings. They desired to "throw some additional impediments in the way of those frequenting the gold-fields," and they recommended the too pliant Governor to raise the amount of the license fee from £1 10*s.* to £3 per month.

By a notice dated 1st December, 1851, it was notified in the 'Government Gazette' of the 3rd December, that after the 1st January, 1852, the increased rate would be exacted. Distracted by rash counsels; yielding with compunction to a will stronger than his own; overwhelmed with work, but battling with it heroically; the Governor, while he sanctioned the regulation, wrote that whether it would throw impediments in the way of the gold-seekers

"remains to be seen, but I earnestly look forward to the introduction of some better system, for, do what you will, the present cannot be held to be any other than a scramble, and a scramble in which nothing but the most unremitting and breathless exertion enables Government, under every circumstance of disadvantage, to keep pace with the popular movement, and maintain in appearance at least some degree of public order and respect to the laws and regulations."

He looked forward to the next three months with apprehension. His advisers could hardly be ignorant that a fickle or arbitrary policy could only be maintained by force; and, both as regarded "intestine disturbance or attack from without," Mr. Latrobe prayed for "one regiment at least" in Melbourne. Neither Mr. Latrobe nor his advisers used any argument to show that a regiment in Melbourne could be serviceable in collecting the new license fee so rashly imposed. That it could be collected at all from the multitudes assembling might be doubted, even if the majority should be willing to pay it. That they would be willing could not be expected. That a man should have to pay on a gold-field in Victoria twice the amount demanded in New South Wales was preposterous. That any man or men, by arbitrary notice, should have power to double or otherwise increase the charge was repulsive. On constitutional grounds it might be denounced by those who had no pecuniary interest in the matter.

Sir George Gipps having only a few hundred pastoral tenants to deal with, had by the presumption of arbitrary authority, roused even the town population to band with the squatters against him, and in those days the colonists had been settled on the soil for years. Mr. Latrobe, when he adopted the advice tendered to him, was surrounded by shoals of greedy gold-seekers bound by no ties to the soil, but ready to rip it open and abscond with the rifled contents. These ill birds of passage protested against the increased charge, and, at a public meeting, resolved to resist it.

There were preliminary meetings at Forest Creek, near Mount Alexander, as early as the 8th December. Men of no good reputation were accepted as leaders. They denounced the new impost as tyranny to be resisted, and declared the existing license unjust, and only to be tolerated at their pleasure. Larger meetings were to follow.

There was a shaking in men's minds. Had the disrespect for authority evinced so often by Dr. Lang and his supporters, in Melbourne and elsewhere, reached such a point that neither for the Queen's representative nor for the new legislators freshly elected by the people there was to be any regard? Was Lang's threat—that in five years from 1851 violence would, in all likelihood, establish a system of government with which Great Britain would have nothing to do—to be made good within a few days? Even Mr. Westgarth, who told the Sydney Council that those who did not like democracy ought to leave the colony to those who did;—even Mr. J. S. Johnston, a man in those days deemed violent, and a partner with Mr. Edward Wilson in the 'Argus' newspaper; even Wilson himself, fierce and illogical as he was in spite of natural kindliness of heart—scarcely wished for such a result. But who could allay the storm which so many had assisted to create? Mr. Henry Miller, a man of wealth and an able debater, had already vindicated for himself a position in the Council. He could not desire to degrade or destroy the functions of the Government without whose guardianship he could not enjoy his possessions.

The representative members, confounded as much as were Mr. Latrobe's advisers, resolved to seem to sympathize with the

riotous gold-scrapers, and thus prevent the odium attaching to the Executive Government from spreading to themselves. Mr. Latrobe and his advisers were like officers awaking to the fact that there was no army in their tents. The 'Gazette' of the 10th December had re-published the order imposing the increased fee. The meetings at Forest Creek were reported in the 'Argus' of 13th December. On the 15th that paper contained a paragraph intimating that the double license fee would not be exacted. On that day a meeting, said to have been attended by from 12,000 to 14,000 people mustering from Bendigo (Sandhurst) and elsewhere, gathered at Forest Creek. The affable Commissioner, F. A. Powlett, declined to call the meeting officially, when asked to do so. Respecting his amiable character, the crowd, instead of meeting close to his "camp," assembled nearly a mile from it. Evidently they thought themselves masters of the situation. Their spokesman hinted at a refusal to pay any fee whatever. One man thought Mr. Latrobe not so wicked as the 'Argus' declared, but that he was "too easily led by the advice of designing men." Another said that his action proved him to be "an immoral man." It was resolved not to pay the increased fee, but not to resort to physical force except in self-defence. Money was to be collected for expenses. Setting aside their quasi-representatives in the House the meeting appointed delegates "to confer with the Government and arrange an equitable system." Three cheers were given for the 'Argus' newspaper.

Geelong was ever the vortex of whatever ignorance was seething in the community. The Mayor was asked to call a meeting to consider the situation on the 16th. He consented, but learning that the promoters were hostile to good government, he revoked his consent. The cackling crowd met in the market-place under a fit leader. They resolved that the imposition of any royalty upon the Crown minerals was "a capitation tax on labour," and unjust. One of them descanted upon Wat Tyler, Charles I., and the American Revolution. Some of the denizens left in the towns seemed as disorderly as the greedy gold-gatherers who had deserted them. Mr. Latrobe published a formal withdrawal of the rash notice of the doubling of the license fee. The 'Argus' had, on the 15th,

intimated that it would not be enforced. The withdrawal, which was dated on the 13th, appeared in the 'Government Gazette' of the 24th.

Though he had consented to the experiment with misgiving, the Governor felt the shame of the abject surrender of authority which his abortive attempt entailed, and on the 19th December, in words suggestive of the pain of the writer, he informed the Secretary of State that having ascertained "beyond all question that the proposed increase in the fee . . would, under existing circumstances, inevitably fail in securing the objects aimed at," it had been rescinded with the advice of his Executive Council.[1] But no veil of words could conceal the truth from Mr. Latrobe, nor would he have lent himself to conceal it from others if he could.

The authority of the Crown and of the law in the colony was tarnished. Sir Charles Fitz Roy's position was injured by the vacillating counsels of the neighbouring colony. Men were dismayed when they thought of the immediate future. If such things were done while the tide of diggers had but commenced to flow, what might not be done when armies of immigrants should have arrived? How could less deference be shown to free thousands than to the riotous mob largely composed of freedmen from Tasmania? The amenity of Sir Charles Fitz Roy was disturbed. He did not fail to apprise Mr. Latrobe that such dealings with the prerogatives of the Crown must greatly injure the cause of good government. It was understood that he would feel compelled to make his opinion known in England.

But he did not, as his commission entitled him to do, step in, and supersede Mr. Latrobe by the presence of the Governor-General. Not only that deep personal respect, which all who

[1] The 'Gazette' notice may be recorded. "Measures being now under the consideration of the Government which have for their object the substitution, as soon as circumstances permit, of other Regulations in lieu of those now in force, based upon the principle of a royalty leviable upon the amount actually raised, under which gold may be lawfully removed from its natural place of deposit, his Excellency the Lieutenant-Governor, with the advice of the Executive Council, hereby causes it to be notified that no alteration will at present be made in the amount of the license fee as levied under the Government notice of the 18th August, 1851, and that the Government notice of the 1st instant is hereby rescinded."

knew Mr. Latrobe felt for him, must have restrained Sir C. Fitz Roy from such a course. Though they might be arrogant, something was due to the public men in Victoria. The Legislative Council, convened under the new Constitution, had met for the first time on the 11th November, 1851. It seemed fair to let them, whether wise or foolish, prove their power to legislate. If foolish, they would not fail to be petulant against even wholesome interference by the Governor-General, who was also Governor of the mother colony, from which the Victorians made it their joy to have been severed.[1] If wise they might be trusted to deal with the situation. If the Victorian Legislature had, by bold adoption of a plan by which a Royalty on gold would be raised at the Custom House (as soon as Sir John Pakington's despatch of 2nd June, 1852, enabled them to do so) swept away reminiscences of the blunder of the Executive Government, they would have achieved reputation for themselves, and would have removed a rankling cause of offence which was to culminate in disaster.

But they who implored Mr. Latrobe to substitute an export duty for a fee, collected like a poll-tax, were disregarded if not treated with contempt. A paper put into Mr. Latrobe's hand, showing that the license fee was collected at a loss, and that a small export duty would yield profit, was scouted. The strong will of the Attorney-General overbore the official, and to some extent the unofficial, nominees in the Legislative Council. All men admired his great power of work, physical and mental, and his devotion to his duties. Moreover, until instructions could be received from England, the question was complicated with doubts. It could not be predicated that the Queen would waive her prerogative over the precious metals, and concur with a scheme which substituted a local enactment of an export duty for the inherent rights of the Crown.

[1] A sense of inferiority to the public men in Sydney was occasionally expressed in Victoria. Mr. Westgarth, one of the Melbourne members, published a book on Victoria in 1853. As to the "instruction" about gold expenditure in 1851, he admits that "the Victoria Legislature were guided by the example of that at Sydney;" that in a variety of "procedure both in the Executive and Legislative Departments of Victoria, the example of the senior colony served as a useful guide to the inexperience of her sister. In point of senatorial qualities no comparison could for the present be instituted between the two assemblies."

While yet men's minds were disturbed by the reflection that government was abased in the colony, an elected member, who usually sounded the thoughts of others before committing himself to an opinion, and had no staunchness to adhere to it against opposition, moved resolutions in the House. Dr. Murphy moved that the gold mines ought "to yield a revenue commensurate with the profits derived from them"—that the monthly licensing system was "unproductive as a source of revenue," "unequal, vexatious, and obscure in its details:" that a per centage on the produce of the mines," in the form of a duty to be levied under the authority of the Legislative Council," would be more satisfactory and beneficial, the rights of the Crown and of the mining population in the works being recognized and secured by a stated fee sufficient for these purposes." The discussion was ill-calculated to create respect for the sagacity of the new Legislators.

Mr. Stawell said, that if the resolutions only went the length of affirming that, "after the Crown had imposed a royalty it was still competent to the Council to impose an additional tax in the shape of an export duty," he would "support them, but if they went further, he could not." He opposed the export duty, because the value of gold being fixed by Act of Parliament, the duty would be a tax on the labour of acquiring it, and it "would not be wise to impose such a tax till the license system was thoroughly established, and our gold-fields proved to be more productive than those of the other colony." It was hardly a matter of wonder that one who had joined in raising the license fee should thus argue against raising, under the name of an export duty, a Royalty, or payment for the privilege of appropriating the property of the Crown.[1]

Mr. Westgarth agreed with the system of licenses, but thought

[1] Mr. Latrobe in his despatch (17th February, 1852), said with regard to the resolution declaring the licensing system unsatisfactory: "To the validity of this opinion I would oppose no objection, being so thoroughly in a position to admit that whether a judicious system in itself and suited to the position of the older colony, it was one which I found myself under the actual circumstances of Victoria, notwithstanding every effort, quite disabled from working in a satisfactory manner to myself or to the public." (Parliamentary Papers, vol. lxiv. p. 158. 1853.) There was a species of passive heroism in the martyrdom of Mr. Latrobe under the acts which others prompted and for which he bore the blame.

they ought to be low. As they never balanced the expenditure entailed in collecting them, it is difficult to know in what sense a merchant could justify such an opinion. Mr. J. S. Johnston approved of an export duty. An adjournment enabled the Master in Equity to afford some much-needed information as to the law and prerogative. Mr. C. J. Griffith, a highly esteemed and most honourable non-official member, saw objections to an export duty. Mr. Splatt, a representative, supported the resolutions. Mr. W. C. Haines, a non-official nominee, complained that the elected members showed no desire to grapple with the difficulty. Mr. J. F. Strachan, a merchant, objected to an export duty, on the ground that it might lead to an export duty on wool or other produce. (The Master in Equity had failed to instil in some minds an understanding of the differences between the natures of things.) Mr. P. Snodgrass (a son of Colonel Snodgrass, who as senior military officer had, in Tasmania in 1836, and in New South Wales in 1837, become Acting-Governor) saw that the export duty would be advantageous because easy to collect. Mr. William Rutledge approved of Dr. Murphy's resolutions, and saw no probability that an export duty on wool could be justified by the levying of an export duty by way of Royalty on gold. The gallant but modest and much abused Colonial Secretary, Captain Lonsdale, said the Government had done their best, and were content to be abused, so long as they were conscious of doing their duty. They "desired to amend the present system, but no feasible measure had presented itself." Then the astute Mr. Miller moved amendments which eliminated the important admission that the gold licenses were "unproductive as a source of revenue." As he, with Westgarth and others, had combined to refuse increased grants from the general revenue (in order to compel the gold to remedy its own wrong), it would have been incompatible with their reputation to admit (however truly) that the gold revenue was insufficient for the purpose. Mr. Miller, however, denied that a gold duty was a tax on labour. The resolutions as amended were carried by 18 votes against 11; there were no absentees. The official phalanx and the unofficial nominees found little or no support amongst the elected members, but Mr. Latrobe's advisers induced him to represent to the Secretary of State that the

resolution in favour of an export duty, while it "seemingly admitted the abstract right of the Crown to the gold, pointed to the adoption of measures which would have the effect of leaving the ordinary revenue to reap the main advantage to be derived from the discovery, in addition to indirect prospective advantages, &c."

Nothing sprung from the debate. So far as absence of information as to the intentions of the Home Government might have tied their hands, the members were to be pitied rather than condemned; but, as they were equally defective in the following year when Sir John Pakington had given them blank charter in dealing with the gold, they cannot escape censure. To Mr. Latrobe it is due to state that he more clearly than others saw and pronounced that the monthly collection of license fees under Royal Prerogative amidst the multitudes prowling over the Crown lands was impracticable at any cost within his control. Admitting that there were constitutional impediments to the substitution of legislative enactment for an executive ordinance or proclamation in the name of the Queen, it is a proof of the barrenness of the House, that under the unexampled circumstances in which it was placed, it made no attempt to carry into effect, subject to the Queen's approval, its recorded opinion that a duty, easy of collection, was the proper remedy for the confusions and dangers of the time.

A clause might have been inserted in the Act to guard the Royal Prerogative. It would have been for the Crown to consider whether its rights were duly preserved. And as the Crown when appealed to, conscious of the exigencies of the colony, promptly empowered the Colonial Legislature to deal with the whole subject, there can be little doubt that had there been in Victoria a man with the genius and force of Wentworth, a method would have been devised by which a reserved Bill would have embodied the opinion of the House, and would have received the Royal Assent, or have been sanctioned by an Imperial Act. But the man was not in the Council. The humiliation of the law, first manifested in 1851, was repeated in 1853; and when evil precedents were imitated by agitators in 1854, the sad duty was imposed upon Sir Charles Hotham of vindicating the law at the cost of human lives.

Some effort was made to preserve order. Acts to repress gambling and obscene language, to amend the law respecting the sale of liquors, and to restrain unauthorized mining on Crown lands, were passed in January 1852. The latter two were so stringent that they were limited to two years. The leaders of the representative members hotly opposed them. It may well be that they thought them undue encroachments on the liberty of the subject. It is certain that in their method of opposition they sought to render themselves popular with a class for whom they could entertain no real respect. Mr. Latrobe told the Secretary of State that a clause empowering a Commissioner to decide between the conflicting claims of authorized miners was "transplanted from the Crown Lands Acts of New South Wales." Sir John Pakington conveyed the Queen's Assent to the Act.

It was with natural anxiety that men looked for tidings from England. How would the public, how would the Ministry, receive the accounts of the fortnight in which Mr. Latrobe arbitrarily announced the doubling of the license fee, and hastily withdrew his announcement? Mr. Latrobe had made efforts to strengthen the military and police force at his command. To Tasmania he sent, in his distress, to ask for soldiers, pensioners, or any human creature who could be hired, for the police. Sir W. Denison enrolled for him a body of military pensioners who had acted as convict-guards on voyages from England. Sir Charles Fitz Roy was able to add a few soldiers from Sydney to the small guard, fifty in number, which was in Melbourne in 1851.

To the Secretary of State Mr. Latrobe pleaded (12th January, 1852), that he must have an accession of military force if the colony was to be saved from becoming for a time the parallel of "California in crime and disorder." An evil spirit was abroad amongst many of the immigrants, "feeling no respect to British rule," and intoxicated with "the sudden acquisition of great wealth in its most dazzling form." He truly said that, when "everything was against" him, when energy was most required at the hands of Government, "the means of meeting the exigency have completely failed."

On the 1st January only two out of forty constables were on duty in Melbourne. In town and country the police had

"almost entirely abandoned duty." About the time when the recalcitrant miners declared that they would resist the law, the Mayor of Melbourne ascertained the feeling of the wards of the city. There had been about 100 special constables, but most of them had gone "to the diggings." In one ward (Fitz Roy), Mr. Tripp and Mr. Robert Willan, both solicitors, carried a resolution pledging a meeting to assist at any hour "in quelling any disturbance of the public peace, and, if required, to act as special constables or night patrol." But in Lonsdale Ward only six persons attended, and nothing was done. In Gipps Ward a meeting declared that it was not the duty of the citizens, but of the Government, to provide protection. Latrobe Ward was unanimous in similar repudiation of duty. Bourke Ward resolved (23rd December) that the Government ought to raise the salaries of the city police, so as to "secure their services during the approaching Christmas holidays."

Mr. Latrobe said that whether soldiers were to be procured from Australia or not, some there must be, if only to make secure the institutions of the towns, and the gold awaiting shipment. At that date "two tons" of gold were "probably" procured weekly at Mount Alexander. He sent circulars to the heads of every department of the colony, and summarized the results of their replies. Several thought confusion inevitable. Some thought that unless salaries could be augmented it would be impossible for subordinate officers to adhere to the service even if desirous to do so. All agreed that without such augmentation serious obstruction would be felt, and none thought that an increase of less than fifty per cent. upon the amount voted by the Legislative Council would be sufficient.

The Superintendent of Police reported that when in obedience to instructions he offered higher rates of pay to his force in Melbourne, fifty out of fifty-five determined to go to the goldfields. His clerk and chief constables would remain. The voted pay for 1852 was four shillings a-day for an ordinary constable. Mr. Latrobe increased it fifty per cent.; but at the same time private employers were giving eight to twelve shillings a-day for ordinary labour. Mr. H. C. E. Childers (afterwards a colleague of Mr. Gladstone) was Immigration

Agent in Melbourne at the time. He reported upon the enormous increase in price of food and wages of labour.[1] He was informed that still further increase was expected. He was correctly informed. Importers (who found themselves mulcted in pounds for services which in Europe were paid for in shillings) asked prices at random to recoup themselves, and were astonished at the readiness with which what they feared might appear as extortion was welcomed by buyers or brokers.

A contract with the Government for an article had been taken (for 1851) at eighteen pence a pound. A contractor offered to supply it in 1852 at an increase of 133 per cent., but was compelled to withdraw, and a new contract was entered into at an increase of 166 per cent. Tenders for some services were invited in vain. It appeared that the Government might be unable to supply food to prisoners in gaol. There was supposed to be money procurable from the gold revenue, but the Governor had no legal control over it. The Legislative Council refused to relieve him by a grant from the ordinary revenue.

An earnest despatch from Mr. Latrobe reached Downing Street (11th May) one month after Sir John Pakington had received intimation of the withdrawal of the notice that the license fee would be doubled by a Government too feeble to perform its duties. The papers laid before Parliament contain no censure cast by the Secretary of State upon Mr. Latrobe. But on the 7th May, the 'Times' had spoken with unwonted vigour. "Nothing but the weakness of the Colonial Government, and the obvious impolicy of parading that weakness, and teaching the miners their own strength, could excuse the manner in which the rich golden deposits, the undoubted property of the public, have been abandoned to be rifled in consideration of a mere nominal payment." . . That the Colonial Government has acted

"prudently in not seeking to command where it was without the power to compel is manifest from the failure of the attempt of Mr.

[1] In describing the wages of "woolpressers," which were 3*s.* 6*d.* a day in 1850, as—"7*s.* to 8*s.* a day in 1851. None to be had"—he vindicated the capacity of an Englishman to blunder in the manner imputed to Irishmen. As his salary was then £350 a year, he perhaps thought his service was worth the money.

Latrobe to double the license fee. . . This demand he has been unable to enforce. . . The Government gave way without a struggle to these threats of strong-handed resistance to lawful authority, and the miners are for the moment satisfied. But the authority of the Government is gone . . and it henceforth only exists by the sufferance of a lawless and heterogeneous multitude . . the same will which repealed with a breath the reasonable and moderate demand of a Government for the price at which it was willing to part with the property held by it in trust for the community, can impose any other conditions, and break through any other restrictions."

A sufficient armed force ought to be sent to assert the law. "Whatever be the terms on which it is thought expedient to permit the digging for gold on the lands of the Crown, those terms ought to be the result of free and calm deliberation, uninfluenced by fear or menace. Where this is not the case, the public resources are surrendered to pillage." When these words were read in Australia, all men felt that no Minister would offer another appointment to Mr. Latrobe. But few knew that he suffered for the propositions of others, which his general amiability deprived him of power to resist. If all had known it they would probably have argued that a Governor who yields against his own judgment reaps the harvest he deserves. The duty of the historian is to tell the facts. They are altogether consistent with the character already ascribed to Mr. Latrobe. But he never sought to cast blame upon others.

The general disorganization of Government, of society, of employment, and of prices, he had a right to plead, and the Secretary of State was bound to consider. Unfortunately they demonstrated the folly of the notification that £3 would be demanded for a license in January 1852. It was not long before the modest Governor sought permission to retire. The community was not unreminded in 1852 of the calamities in store for it. But the reminder was like the unheeded voice of conscience. Under the style of 'Colonus' the Chief Justice, Sir W. A'Beckett, published an eloquent appeal entitled, 'Does the discovery of gold in Victoria, viewed in relation to its moral and social effects as hitherto developed, deserve to be considered a national blessing or a national curse?' The motto was, "Am I therefore your enemy because I speak to

you the truth?" He wrote "at the risk of denunciation from a press which echoes the wishes of the multitude because it profits by their gold."

The manifest abasement of public morality; the sordid lust which coursed like a new form of madness through men's minds; the manner in which those who should have striven to guide opinion had pandered to passions which spurned what was pure and good, and clung to that which was foul and debasing, were submitted in vehement but choice language to every one whose pocket was not his God, and who hoped "for the dispersion of the mists and tempests by which our social and moral atmosphere is now overcast and disturbed." Let the people rouse themselves to a sense of their true position. "There is hope above, if there seem cause of despair below. God is everywhere. Go where we will, there is for all of us a sublime part to be acted before a sublime spectator."

Let not the Christian colonist, looking down in sorrow and dismay on excitement and worldliness below, descend from those lofty summits, "solitary and companionless though he be; still from that eminence let his voice be heard even though its echoes fall unheeded among the dwellers below. The hour may come when they will find some listeners and attract some footsteps upwards that may lead the way for others to follow. Thus, out of individual, may perchance spring national, elevation . . . " The reader will divine the fate of the Judge's anonymous appeal. Hordes still arrived in quest of the operant poison which had envenomed the life-blood of the the little community of 1851. Still the Government, the press, the Legislature, acted as if to discover gold—more gold—was the one thing needful under the sun. Rewards for discoveries of new fields were vaunted as the true means of raising Victoria to a worthy place among nations. Swollen export lists were pointed at as proofs of the sound condition of the people. The land was like an ant-heap over-run by hungry gold-gatherers, with the difference that the busy ants laboured for the common weal, and the ravenous men laboured for themselves.

Sir John Pakington's tenure of office in Downing Street was as conspicuous for importance as for brevity. The answer to Wentworth's Remonstrance, which allayed all constitutional

agitation throughout the colonies, has been described. The response to the cry of the oppressed Latrobe preceded the reply to the Remonstrance of the sagacious Wentworth by a few months. It was comprehensive. Sir John Pakington (2nd June, 1852) conveyed the Queen's command that the Royal Prerogative as to the gold in Australia should be waived in favour of the Colonial Legislatures.

"I have therefore to instruct you to place this fund (after securing whatever permanent changes you may have already placed on it) at the disposal of the Legislature, for their assistance in providing for the service of the colony; relying fully on that body for its application in such manner as best to assist the local government in conducting the affairs of the colony through the difficulties of the present crisis. It will therefore be for the Legislative Council to fix the amount of fee at which licenses should from time to time be granted. It will be for them, in addition, to take into consideration the propriety of raising a revenue from the mineral produce of the colony either by export duty on gold, or by royalty, or in any other manner which their local experience may suggest."

He had not deemed it necessary to incur the delay which the preparation of a formal Royal instruction would have involved. It could be transmitted thereafter if necessary. Further, the Governor was authorized to apply the unappropriated moiety of the land fund "to the purposes rendered urgent by the present crisis." The resolution of the Legislative Council, not to suffer the application of general revenue to them, Sir John Pakington regretted, but he "was especially anxious to avoid all controverted topics at a period so critical,"—it being fully understood "that in no event would Parliament be asked to assist if the land fund should prove insufficient."

There were other details in the despatch. A body of constabulary would be enrolled and sent out, in the expectation that the Legislative Council would willingly meet the expenditure required.[1] As far as it might be in the power of the Secretary of State, the experiment would be extended on application

[1] On the 14th May Sir John Pakington had announced that a regiment had been ordered from Hongkong to Australia. Four companies were to be in Victoria and two in New South Wales.—Parliamentary Papers, vol. xxxiv. 1852.

from the colony. Emigration would be sedulously promoted to relieve the reputed wants of the disturbed community, and Sir John Pakington concluded his notable despatch with words of comfort. On the 14th May, when the leading article of the 'Times' was in all men's mouths, he expressed his "strong sense of the very unusual difficulties you have had to encounter, and the great exertions by which you have endeavoured to overcome them." On the 2nd June he repeated his approval "of the zeal with which difficulties have been met both by yourself and the officers under your directions."

While Mr. Latrobe anxiously awaited replies to his voluminous despatches, he laboured assiduously at his post. He increased salaries to enable public servants to live. He reported (March 1852) that "a marked change for the worse had been observable since the beginning of the year in the character of the people, in certain divisions of the gold-fields more especially." "The expiree population of Tasmania, returned Californians, and the most profligate portion of the inhabitants of this and the adjacent colonies, became broadly conspicuous." Disorder was of "common occurrence" at the gold-fields, but he maintained that the rumours of "unchecked universal prevalence of crime" there, "detailed with such effrontery and recklessness in the profligate public prints of this colony itself, or greedily retailed and commented upon for evident purposes in the New South Wales press," were "the greater part false," . . . or "so grossly exaggerated as to be unworthy of credit." Facilities for crime without doubt existed in a wild tract of forest "honeycombed with hundreds or thousands of ready-made graves"—where the rascal who envied a fortunate digger might hurl him to die in the hole he had scooped to find a fortune in. But "the great proportion of the people on the ground" was orderly. Agitators, and the evident disposition of "a portion of the colonial press"[1]

[1] It was unfortunate that Mr. Edward Wilson, co-proprietor in the 'Argus' newspaper and its conductor, lent his great energy to the disastrous task of lowering respect for lawful authority. He had been connected with the 'Argus' for several years. He incorporated the 'Daily News' with it on the 1st January, 1852. The 'Argus' had then an enormous circulation in proportion to the population. There were no local newspapers at some populous gold-fields, and the fierce diatribes of Edward Wilson against Mr. Latrobe were read with avidity. In those days Mr. Wilson was a democratic

"to induce political excitement," did harm; but those who knew the "real state of the case" were surprised at the good conduct of the bulk of the people. Yet he reported an ominous fact. In January 1852, the small body of police at the Mount Alexander gold-fields "made between fifty and sixty seizures" of spirits, and illicit sale was growing "with the increase of the population." Odious as tax-collectors, the police force could gain no popularity by their raids upon those who provided for the dissipation of the motley and riotous mob at the gold-fields. As the police had an interest in the fines inflicted upon illicit traffickers, it was of necessity charged against them that they sought for gain rather than the good of the community. They ran great risks in their captures of offenders. One officer on the gold-fields, of an ancient Border name, was notorious for deeds of strength and daring, and few persons thought that even his powers would extricate him alive from his dangerous career.

Some persons around Mr. Latrobe seemed not to see that the enormous expenditure entailed by such a system would absorb more money than the gold licenses would yield. If every digger had been willing to pay, there would have been some justification for the mistake. But many were unwilling. On the

theorist. He lived to see that the passion of a mob, working with its ignorance, was not the heaven-born thing he thought when in the columns of the 'Argus,' in order to injure Mr. Latrobe and flatter the crowd, he daily inserted a notice—"Wanted, a Governor. Apply to the people of Victoria." Mr. Wilson became unpopular himself when he was wealthy. He never avowedly abandoned what he had called his liberal views; but he lived to hold opinions inconsistent with them. The fickle crowd whom he caressed in 1852 had threatened to attack the 'Argus' office in 1854; and had taught what reflection had not revealed to him. In a pamphlet published in 1857 he affirmed that with "the utmost expansion alone" (of the suffrage) "true liberty is incompatible. If we count only *numbers* we hand our predominant political power to an accidental numerical majority —and this to my mind is tyranny." The public, who remembered his writings in 1851-2-3, were amused at the spectacle of Mr. Wilson writing to the 'Argus' (then edited by Mr. Higinbotham for Wilson and his partners), and contending with the editor who (in 1856) supported universal suffrage unalloyed by any representation of property. In justice to the combatants it must be stated that they were both highly esteemed in private life. Mr. Wilson, retired in affluence, occupied himself with works of utility and benevolence, until his death in 1878. He left his fortune in great measure to institutions for the relief of his fellow-creatures.

Mount Alexander gold-field, in January 1852, an official staff of more than 172 persons was maintained, and more than 100 of them were allowed forage. The cost of transporting forage, great at first because of high price of labour and of every material, was swollen enormously as the roads were damaged by traffic. The roads themselves had been tracks used by the squatters, and when the surface was deeply ploughed by continuous wear and tear they became almost impassable. The price paid for hay in country districts was calculated so as to enable the seller to obtain as much as the buyer would have to pay to a dealer in Melbourne, with the addition of carriage to the spot. Carriage from Melbourne exceeded £40 a ton. Hay itself afterwards rose in Melbourne to more than £40 a ton. Anxious to benefit the service, officers obtained leave to purchase supplies in the country districts, and hay which had cost £60,000 was in one case accumulated and lost, because the unbucolic minds of the officers, or inability to procure labour, had not guarded against destruction by weather, and there was confusion and hurry in the performance of their novel duties.

And still the tide of population rose with increasing force. In April 1852, Mr. Latrobe reported that there were forty-seven ships in port, mostly deserted by their crews. There was nothing to protect a ship freighted with gold from pillage. One of them (the 'Nelson') had been plundered. Four sailors and three passengers opposed no resistance to a gang who made off with 8183 ounces of gold. Fortunately the police apprehended the robbers, though not before they had parted with their booty. The gold was recovered and the thieves were convicted. In the same month 20,000 gold licenses were taken out, and it was known that in thousands of instances they were evaded. The motley crowd plodded through summer dust and winter mire to the Mount Alexander gold-fields. Heavy rain in May 1852, made the Black Forest, on the road from Melbourne to Castlemaine, a slough of despond. The gold-escort, with 31,000 ounces of gold, succeeded by a circuitous route in reaching Melbourne after seven days' toil. Horses and pack-saddles were used when carts could no longer be drawn through the mud. Crowds of immigrants, camped near drays with shattered poles and wheels, mingled curses upon the Government with oaths to

their over-burdened beasts. They scorned to reflect that the colonists of 1851 would have been foolish, even if possessed of means, to anticipate in road-making the wants of unexpected thousands, outnumbering many times the population of 1851.

But profuse ideas reigned. The fortunate gold-scrapers flung their money broadcast in scenes of luxury and debauchery. Stories were told that many of them scorned to take change from a barber when tossing him a pound sterling: that a roughly dressed man called a cab which he required for the day; that when the driver replied that the man could not have it unless for more than he would like to pay,—seven pounds,—the *novus homo* threw him ten pounds, and told him to light his pipe with the difference;[1] and it was known that in the very drunkenness of enjoyment of their wealth many "diggers" lit their pipes with bank-notes. Like him who in spurning a rich carpet

[1] This anecdote is found in "Two Years in Victoria" (1855) by the well-known author William Howitt. As a picture of the misadventures of persons unfitted for the rough life of a gold-hunter the book is trustworthy, and, like all Mr. Howitt's works, interesting. But as an examination of the political condition of the colony it has no value. Mr. Howitt was in Victoria in 1852, and we find him railing at the Government for not having prepared roads for the gold-hunters, and not protecting them from extortion at a ferry which had been put up by a private person under Government sanction, and at which the fees, reasonable enough when the traffic was insignificant, seemed exorbitant to Mr. Howitt when the throng to the Ovens gold-fields enabled the ferryman to derive an unexpected harvest by carrying Mr. Howitt and others across the Goulburn river at Seymour. No doubt Mr. Howitt intended to be accurate, but he obtained much incorrect information. He blamed every one because glowing accounts of the gold-fields attracted immigrants. He assailed the Wakefield system of colonization which was adopted in South Australia (vol. ii. p. 119) as "new and fatal." Though it had been half-heartedly adopted its effects (unrecognized by him as due to it) are admitted as having "cut off the land speculators from the chance of buying large tracts over the heads of the small capitalist; and by this means a farming population has been established . . . (vol. ii. p. 126). Mr. Howitt could not fail to see the inapplicability of Earl Grey's Orders in Council, and vigorously denounced them. He did not see that they were opposed utterly to Wakefield's principles, and that by refusing to depart from one of those principles the South Australian Government, always retaining the power of sale of Crown land, were able to meet public needs wherever arising. On the whole Mr. Howitt's racy work shows that he too freely accepted garbled statements. His errors in reference to colonial affairs in the early part of the century are pardonable. He supposed that in repeating the words of others he might tell the truth.

proved that his own pride was greater than that of his luxurious host, the digger in affected contempt for wealth boastfully exhibited the pride of wealth in his own heart. His example spread. The "wealthy lower orders" who flung away their money promiscuously seemed to be the only employers worthy of respect. Mr. Ebden the Auditor-General asked a cabman (whom he had known of old) how much was required for a carriage for the day. "Ah, sir!" the man answered, respectfully, "we don't drive gentlemen like you now-a-days." "Why not?" "Oh! you would not pay what we can get from the diggers." The man was right as regarded the inadequacy of an official salary to defray his demand—seven pounds—but Mr. Ebden, being a man of private wealth, employed him.[1]

The riot of riches was shown at what were called diggers' weddings. The injunction to shopkeepers was that the dresses should be as dear as possible. Flaunting their gorgeous satins, the friends rolled in carriages to the ceremony, and afterwards kept up their excitement on the road or in hotels. Such persons scorned the dull citizen who merely paid his debts like an honest man, and their scorn, backed by the purse-pride of others, became contagious. The loose language of the press fomented the evil. The appeal of "Colonus" fell dead upon the general ear. New-comers caught the "gold fever," as the excitement of the time was commonly called, on touching land.

The tide of immigration was so overwhelming that on arrival in Melbourne no house accommodation could be found for the new-comers. All hotels and lodging-houses were over-crowded. In the coffee and dining-rooms of some of them, more than twenty beds were scattered upon the tables and floors. One

[1] Rough crowds thronged the street corners; and the movements of the police were almost on sufferance for a time when the force, dismantled by desertions, was in process of slow reconstruction. Such a crowd on one occasion extended far across a street, and Mr. Ebden (whose manner was rather pompous and affected) driving by in a curricle, disturbed the noisy mob, who shouted loud curses after him. Alighting and addressing them with suavity, he said, "Did you speak? Do you want to buy? You are the gentlemen who should possess these equipages now. I will sell." After good-humoured explanation on both sides he drove off, and some of the crowd who had cursed him previously cheered him with mixed astonishment and applause. Mr. Ebden's precise politeness obtained for him the soubriquet of Beau Brummell from those who disliked him.

woman, landed on the Melbourne wharf, brought forth her child amidst the crowd. Pell-mell, through mud and mire in the streets, old and young, weak and strong, staggered or strode into the land of gold. A mixed multitude was dispersed in tents and other temporary shelter on the open spaces near Melbourne. One of them earned the name of Canvass Town on the south side of the Yarra. It spread to the reserve intended for a site for a Government house, and trees were destroyed by gleaners for firewood. With no out-offices of decent nature, the scenes in Canvass Town were such as to jar upon the feelings of even the unrefined; and in that huddled assemblage there were many delicate and sensitive persons plunged by circumstances into a vortex which the master of the tent or hut had not anticipated. For the water-police, and the female immigrants who arrived under contract of the Government with shipowners, hulks were secured in the bay, because (Mr. Latrobe wrote) "to hire quarters at any justifiable sacrifice is quite out of the question."

While thus toiling against multiform difficulties as assiduously as any galley-slave, Mr. Latrobe received the comfort of Sir John Pakington's despatch, subjecting the revenue arising from gold to the local legislature. Never arrogating a commanding position, he acknowledged its receipt as most opportune for "my Executive Council and myself," and a relief of "Government in many points of view from a great state of doubt and embarrassment." Armed with fresh powers, he applied them to remedy the evils which promiscuous herds of families encountered at Canvass Town and elsewhere. He had convened the Legislative Council in June 1852, and he lost no time in acquainting it with Sir J. Pakington's despatch, stating at the same time that he would—"acting upon the suggestion of the Secretary of State —bring the question of the expediency of levying an export duty upon gold at once under the consideration of the Council."

The swelling notes with which Mr. Westgarth and others had innocently imitated the utterances of their leader Dr. Lang, with whose ulterior objects they did not sympathize, were hushed.[1] The House unanimously resolved, on the motion of

[1] Mr. Westgarth attributed "certain divisive and forbidding features" of democracy to those who thwarted "the unavoidable tendencies of society," and opposed "a democratic dust which themselves have been the means of

Mr. J. S. Johnston, . . . that the kind and "conciliatory tone (of Sir J. P.) is greatly calculated to foster and encourage those feelings of loyalty and attachment to the Crown and institutions of the mother country with which it is so desirable that the minds of Her Majesty's distant subjects should be imbued . . ."

A spirit of mutual co-operation was shown for a time. The representative members had been startled at the demonstration against obedience to the law in December 1851; and the readiness with which the relics of the Geelong population had echoed the threats of the crowd at Forest Creek created an uneasy feeling that perhaps some speakers in the House, as well as the 'Argus' newspaper outside of it, had fanned the flames of sedition abroad.

Before the spring had tempered the chilliness of the mild Victorian winter the hardships to which the dwellers in Canvass Town were exposed, united Government officials, opposition members, and citizens, in an effort to place decent shelter within the reach of those who craved it. The Wesleyans in Melbourne had set the example by forming at a cost of £2000 a "refuge for the houseless," primarily for their own people, but open to others. As far as possible it was to be self-supporting. A public meeting was held to apply the same principle on a more comprehensive scale. A preliminary committee had prepared plans which were approved by the meeting, of which Mr. Westgarth was chairman. He stated that there were "hundreds and thousands unprovided for." The Attorney-General moved the first resolution. "As a token of cordial feeling" as well as "a sanitary measure for the city," "convenient though temporary shelter for two thousand persons" ought to be provided. The Government would afford a free site. The rent paid by occupants would reimburse those who might subscribe for the buildings. Mr. J. S. Johnston seconded the motion with a hope that the Government would advance two-thirds of the cost of building.

The Government eventually adopted the suggestion. Private subscriptions yielded several thousand pounds. An "Institution

stirring up." He was not "desirous of ramifying the argument," but would be satisfied "to risk, one with another, the popular rather than the Imperial results." Westgarth's 'Victoria,' pp. 336, 338. 1853. He was deemed an important member of the Council.

for Houseless Immigrants" supplanted the disgusting confusion of Canvass Town. It was opened on the 10th December, 1852, under combined supervision of managers appointed by the Governor and by contributors; and within one year, 7586 persons, described by the resident superintendent as "of all classes and of every nation," were housed within it. The buildings were wooden and rough, but cleanly. Shelter was afforded at a store on the wharf on the first landing of helpless families. Rent was gladly paid by all who had means, but the managing committee remitted the debt in cases of distress. The active and capable superintendent, Mr. John Williams, afterwards received a permanent appointment at the Melbourne Hospital.[1] The funds in hand when the institution was no longer required became a valuable boon to the Benevolent Asylum in Melbourne in accordance with one of the original resolutions of 1852.[2] But the concord in regard to unhoused immigrants was local, and comparatively unimportant. In weightier matters the Government was unsupported. The inconsiderate railed at it because roads were bad, and carriage was exorbitant. Robberies became

[1] The author was one of the Committee of Management of the Institution of Houseless Immigrants, having been one of the speakers at the public meeting in 1852, and having acted on the Committee until the breaking up of the Home. In one week there were 747 inmates in 1853. A report of the first public meeting is to be found in the English Blue-books, vol. lxiv. p. 265. 1853.

[2] As a proof of the need of caution in travellers it may be mentioned that in 1853 one of the Professors of the Sydney University (not Dr. Woolley) visited Melbourne, and hearing some ignorant gossip about the Houseless Immigrants' Home, wrote to the 'Sydney Morning Herald,' to complain that "the Home had been made a profitable speculation," and that its name—redolent of a generous hospitality—is now used as a lure." As the complainant had not condescended to apply for any authentic information, the Committee of the Institution promptly (8th March, 1853) denounced his letter as a "gross slander," and communicated the statistics of the Home at the date of their letter. £3673 14*s.* 3*d.* had been received in subscriptions; 1280 persons had been entered on the books (within five months of the public meeting which initiated the undertaking), and 353 others had received gladly a night's shelter. The letter was signed by the much-respected chairman R. W. Pohlman, by Robert Kerr, by the author of this work, by Mr. Grimes the Auditor-General, and others. The 'Argus' in printing it requested "the public to notice the names of the gentlemen forming the Committee, and to ask themselves whether any or which of them are likely to do otherwise than endeavour to do justice to the interesting office entrusted to them."

frequent. The drunken gold-miners, who lit their pipes with bank-notes in riotous purse-pride, were an easy prey to the abounding sharpers among their associates. The gaols were full, but unchecked crime was common. Mr. Latrobe, wanting to build police barracks, was told by his colonial architect that workmen demanded (October 1852) from twenty to twenty-five shillings a day. In November 1852, he regretted that robberies "by armed parties on the outskirts of the gold-fields and on the main lines of road have been very frequent for some time past."[1]

The discovery of a rich gold-field on a tributary to the Ovens river, more than two degrees of longitude eastward from Forest Creek, added to the troubles of the Governor, and gave facilities to robbers. The despatch of a body of 50 men from England, under a competent Inspector of Police and three sergeants, was happily announced in November 1852, and a vessel of war was ordered to Melbourne; but the Secretary of State, who had so heartily co-operated in relieving the necessities of the colony, was removed from office early in December, and gave place to the Duke of Newcastle, who pleaded that he passed sleepless nights in thinking what he ought to do, but who often did wrong.

It is disheartening to reflect upon the jejune manner in which the local legislature addressed itself to its duties when Sir J. Pakington entrusted it with power over the gold revenue. Mr. Latrobe's message,—communicating the despatch, and, in compliance with its suggestion, bringing the expediency of "an export duty upon gold at once before" the Council,—was dated 7th September, 1852. On the 17th September unanimous thanks were voted to Sir John Pakington. A Bill to impose a duty had been introduced, and was set down for a second reading on the 17th September. But on that day the procacious element was exuberant in the Council. Mr. J. S. Johnston sought guerdon for his praise of Sir John Pakington. He brought up a draft address extolling the colony as "the chief pivot of postal and steam communication"—"the most eligible centre"—"the head-quarters of naval and military forces"—salubrious, prolific—likely to exceed New South

[1] Quotations from Mr. Latrobe's despatches are made from the English Blue-books.

Wales in population in December 1853—with "an indicated destiny" vindicating "its pretensions to be the seat of supreme government."[1]

The dethronement of New South Wales from pride of place was nearer the hearts of some Victorians than wise dealing with the festers of the gold-fields. But the Gold Export Duty Bill was nevertheless read a second time on the motion of Mr. Stawell. No amount was stated in the Bill, but he intimated that he would subsequently propose two shillings and sixpence an ounce. Mr. Fawkner, Mr. Ebden (the Auditor-General), Mr. J. S. Johnston, and Dr. Murphy supported the measure; but there was a combination against it. Mr. H. Miller (money lender and banker), Messrs. Westgarth, Strachan, and Turnbull (merchants); Messrs. Campbell and Splatt (squatters); and Mr. O'Shanassy, then a draper in Melbourne, formed a squadron of seven important members who voted in a minority of 7 against 19. Petitions hostile to the Bill were afterwards promoted. The duty was denounced as a class tax. The energies of members were about the same time thrown into a fierce struggle made by Mr. J. S. Johnston to carry a vote of want of confidence in Mr. Latrobe,[2] whom the 'Argus' newspaper was daily vilifying, and whom the editor's friend, Johnston, assailed with unmeasured coarseness in the House. On the 23rd November a meeting at the Forest Creek gold-fields determined to resist payment of license fees if the Gold Export Duty Bill should be passed.

On the 24th November the Bill was strangled in the House. O'Shanassy opposed it as unpopular, impracticable to collect on a coast line of two hundred miles, and unneeded, because he was

[1] The Duke of Newcastle conveyed Her Majesty's expression of interest in "the marvellous discoveries of mineral wealth in her Australian possessions," but said that he had not deemed it "advisable to recommend Her Majesty to constitute any seat of supreme government in the Australian Colonies." Despatch, 5th February, 1853.

[2] The debate deserves brief mention. Mr. Ebden, though not one of the Executive Council, exposed the folly of the motion. What result could it have? Under the constitution of the colony no change of Ministry could follow as in England. Mr. Johnston found 12 followers nevertheless—Westgarth; Dr. Thomson (Lang's henchman); O'Shanassy; Strachan; Turnbull; Splatt; Campbell; H. Miller; W. Nicholson; Fawkner; Rutledge; Mercer. Thirteen out of the twenty elected members formed the minority.

sure that eighty thousand license fees might be collected instead of 27,000. Mr. T. T. A' Beckett[1] (a solicitor, and a nominee) averred that if nine-tenths of the community were opposed to the Bill the Council ought to pass it nevertheless if it were beneficial; but he, though a Crown nominee, saw a serious obstacle. So long as the license fee remained at £1 10*s.* per month the Government was bound in honour not to impose a duty. Mr. Michie (a leading barrister, and also a nominee) sympathized with Mr. A' Beckett.

Mr. Stawell, with unhappy ingenuity, offered to try the legal question whether the section quoted took from the Government "the power to lay on another duty." Some members still supported the Bill. Mr. J. S. Johnston declared that pledges must be respected. He demanded a categoric reply. What would the Government do about the license fee? The Attorney-General's answer, that the amount would not be changed, sealed the fate of the Bill, and with it all hope that order and peace would be maintained at the gold-fields.

O'Shanassy retorted that the Government by such a course might extort an equivalent to a £3 monthly license. Fawkner denounced taxation of gold-diggers, and the Bill was lost. Two Crown nominees, both lawyers, voted to shelve it for six months; and it appeared that they would not have so voted if the Attorney-General had been willing to abate from the license fee, which was hard to collect and much evaded, an estimated equivalent to the amount obtained by the export duty, which was easy to collect, and which, though it might occasionally be evaded, was so slight an impost that the hope of successful smuggling was quenched by reflection that forfeiture of one detected parcel would annihilate the fraudulent profit upon many undetected.[2]

With this rejection of a scheme for raising a royalty on gold as it passed through the channel of the Custom House, vanished all hope that the proffers of Sir John Pakington would be opportunely availed of by Mr. Latrobe and his advisers, or by members of the Legislature.

[1] Brother of Sir William A' Beckett, then Chief Justice of Victoria, and also of Gilbert A' Beckett, the author of the 'Comic History of England.'

[2] The division list was as follows: it was taken in Committee:—

The prompt measures of the South Australian Government which effectively averted the depopulation of that colony attracted attention in Victoria. To win back the miners who had flocked to the gold-fields and induce them to settle permanently in South Australia, not only was the procurement of farms kept within easy reach, but the gains of the gold-miners were transported by an armed escort maintained by South Australia between Victoria and Adelaide. Mr. Splatt moved a resolution that the escort should be stopped, and that the gold should be carried free of cost to Melbourne and Geelong. On a division he was supported by Mr. Stawell only. Ebden, Captain Lonsdale, and sixteen others rejected the motion. Mr. Hargraves visited Victoria in 1852, and was publicly entertained. The 'Argus' newspaper (9th December) advocated a grant of £5000 to him. It would "be the glory of Victoria" to surpass New South Wales in liberality. The vote was shelved in Committee on the 17th December by 12 votes against 7.

Mr. Fawkner obtained a Committee upon assaying gold, in July 1852, and submitted its report in January 1853. It advocated the establishment of a Government Assay Office, and urged that "Melbourne should be the site fixed upon for the Australasian Crown Mint." Thus did the Victoria members wrangle while the storm was gathering on their gold-fields; while the collection of license[1] fees by armed police excited popular opprobrium

FOR SHELVING THE BILL, 12.	AGAINST SHELVING IT, 11.	
H. Miller.	The Attorney-General (Stawell).	nominees.
J. F. Strachan.	The Auditor-General (Ebden).	
T. T. A' Beckett.	Chairman of General Sessions.	
A. Michie.	Solicitor-General.	
J. P. Fawkner.	Colonel Anderson.	
W. Westgarth.	J. T. Smith.	all elected members.
W. Campbell.	Dr. Thomson.	
J. F. Palmer (the Speaker).	Goldsmith.	
J. S. Johnston.	Wilkinson.	
W. Nicholson.	W. Rutledge.	
J. O'Shanassy.	P. Snodgrass.	
W. F. Splatt.		

[1] In a financial Message (3rd November, 1852), Mr. Latrobe reckoned upon the following receipts:

Gold Licenses and Leases	£505,000
Escort and Treasury Fees	63,000

under the name of "digger-hunting," and men acquainted even slightly with English history foreboded the worst results. Before the end of 1852, Mr. Latrobe lost the services of the most sagacious of the public servants in high office, Mr. C. H. Ebden, the Auditor-General, whose acknowledged eminence as a financier extorted some respect for his advice, although he was not a member of the Executive Council. They who were jealous of Ebden's ability had no desire to see him amongst the Governor's confidential advisers. Mr. Latrobe could have wished a different state of affairs, for the business qualities of Mr. Ebden had frequently been shown in redeeming public and private institutions from confusion; but Mr. Latrobe gave way to others. At last the Auditor-General, unable to submit to imputation of responsibility for measures of which he disapproved, and against which he sometimes protested, resigned his office, and Mr. Latrobe was left to the crude counsels of men none of whom had any reputation for financial ability, and none deserved it.

The new Auditor-General was a man of different mould. If Ebden was too proud to submit to do wrong at the behest of a great man, Childers was too happy in the hope of winning a great man's favour to draw superfluous distinctions on the ground of morality. He had migrated to Victoria before the discovery of gold, and had become a wharfinger's clerk. His friends were well known in the English political world, but they only procured for him letters of introduction from the Colonial Office. Moved by these, and by natural kindness, Mr. Latrobe promoted him first to the post of Secretary to a Denominational School-Board, and afterwards to the office of Immigration Agent. The Attorney-General saw in him a pliant supporter. He saw in the Attorney-General a desirable patron. Plausible, industrious, and always acquisitive, he made himself useful in inquiries. He had neither said nor done anything betokening ability, but the rapidity of his rise created a belief that he was able. Capable of ordinary things, he

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Export Duty on Gold £375,000
Transfer from Territorial to General Revenue ... 300,000

Nevertheless he anticipated a deficiency at the end of the year 1853. The police estimate alone was £412,715. Gold Commissioners, &c., were to absorb £62,000. As explained in the text, the export duty was refused.

was harassed by a desire to distinguish himself, and in every department over which he presided he set on foot schemes of re-organization which ended in disaster. His translation from one office to another left a successor to deal with the chaos engendered by his experiments. In one sense he lacked the complement of barrenness of principle. Ready to evade difficulties by equivocation, when face to face confronted with proof which could not be put aside, he shrunk back. Lack of self-respect breeds a want of respect from others. On more than one occasion he encountered in the colony the rebuff which met him when Sir Spencer Robinson, whose word no man could doubt, foiled his statements at the Admiralty.[1] Such as he was, next to Mr. Stawell, but *longo intervallo*, he was the ablest officer whom, after the loss of Ebden, Mr. Latrobe could consult. Mr. Latrobe understood the position, but submitted to his fate. Mr. Childers had not been long at the Audit Office before his passion for disturbing the arrangements of others, and for remodelling departments, induced him to devise an Imprest system, the result of which was that within eighteen months there was found to be a sum of £1,682,328 of unadjusted Imprests, of which £283,745 were reported by an expert committee to be "wholly unaccounted for."

Mr. Latrobe was never without apprehension of riot and bloodshed at the gold-fields. At the Ovens river, early in 1853, there was (he wrote) a disposition "from the first to evade if not openly resist the regulations," and he admitted that "the ill-judged if not improper conduct of the authorities on the ground in more than one instance favoured if it did not provoke this spirit." The death of a miner from the "accidental discharge of the firelock of a policeman . . . gave occasion to a temporary outbreak in that quarter, which at one time threatened to entail grave consequences."

An Act to regulate the police force had been passed (January 1853), and under a Commissioner, whose duties ranged

[1] It is a matter of English history that Mr. Childers, unable to meet the shock of Sir S. Robinson's lance, induced Mr. Gladstone to enter the lists, and that to assist in maintaining Mr. Childers' credit Mr. Gladstone was reduced to ask Sir S. Robinson to alter the date of his reply to a Minute by Mr. Childers. Sir S. Robinson declined to garble it.

over the whole colony, the constabulary on the ground were increased.

Soon afterwards (May 1853) there was provocation at Forest Creek. Mr. Latrobe, in a despatch on the 3rd May, had deprecated in strong language the "misrepresentations and false statements" which represented Victoria as "a scene of lawless confusion and unrestrained riot." In spite of "the irruption of vicious elements from without, and studied and systematic incitement to disorder from within," there had been less disorder than might have been expected. Doubtless he believed what he wrote. But he knew not all the facts. He did not see that the police in prosecuting the hated calling of "digger-hunting," to inspect licenses, or arrest unlicensed miners, and not much less in their quests of unlawful sellers of spirits, had become odious as the Turks in Bulgaria.

In May 1853, a disturbance at Forest Creek alarmed, and the manner in which it was compromised deceived, the Governor. The officer who compromised, the upright and honourable W. H. Wright, the Chief Gold Commissioner, deceived himself. His education had been military, and though his abilities were considerable he had no experience of, or sympathy with, the public meetings and speeches common among Anglo-Saxons, and dear to demagogues. He was kind-hearted; and, when an ensign in the 50th Regiment, he had on the ill-fated Waimate shore risked his own life in arresting the slaughter of Maoris by men of his regiment,[1] in 1834. He was fond of military method, and "the camp" was a model of order. He had many duties, and many men to control. With 173 mounted police, 259 foot police, 120 military, and 1410 labourers, employed at and in connection with the principal gold-fields, besides 294 other persons, and eight clergymen of various denominations, to control and to consider, his task was serious. If he could have established sympathy with the better minds amongst the mining population it might have been possible to avert a final catastrophe.

Mr. Latrobe himself had been educated amongst the Moravians, and was sufficiently unsympathetic with the noisy public meetings of Englishmen to fail to see what Mr. Wright did not report. Others saw and noted it at the time. There was

[1] 'Two Visits to New Zealand.' W. B. Marshall, Surgeon. London: 1836.

estrangement if not ill-will between the officials and the miners in most places. In May 1853 the police, under a stringent Act for suppression of illicit sale of spirits, attacked and burned the tents of several persons, one of whom, a trader, McMahon, received lodgers. Burning tents was not an unusual course in such cases. But in this instance the principal sufferer was innocent. There was indignation. What had happened to him might happen to any one. After a public meeting notices were posted about the gold-field: "Down with the trooper, Christian, and shoot him. Down with oppression . . Diggers, avenge your wrongs . . Down with the camp. Up with Christian. Cry 'no quarter,' and show no mercy."

Mr. Wright hastened from Melbourne to Castlemaine. The magistrates had dismissed the charge of illicit selling of spirits brought against the tent-owners. The informer was committed for trial for perjury. (He was convicted in June, and sentenced to five years' hard labour.) The excited meeting had appointed certain persons to demand justice for McMahon and his friends. The delegates desired to see Mr. Wright, who declined to receive them as representatives of the meeting, though he would confer with them as agents for the sufferers. They demanded, in that capacity, £1900—partly for "outrage to feelings, false imprisonment, bail refused," &c. Mr. Wright thought direct dealing with McMahon advisable, and negotiated an interview at which he told McMahon and two other sufferers that Mr. Latrobe had empowered him to satisfy all reasonable demands. With £230 given to McMahon, and £120 to two others, he sent them away satisfied. But the men who had gathered at the meeting thought themselves defrauded of a case with which they could have moved the country to anger, and they forgave neither McMahon nor the Government. Innocent of the intent, Mr. Latrobe and Mr. Wright bore the imputation of having bribed the sufferers to silence. Not comprehending the situation,[1] Mr.

[1] It may be said that it is easy to claim credit for understanding affairs of the past; and persons who were responsible for them in 1853 may aver that the results could not have been foreseen. But they were predicted to the Colonial Secretary, Mr. J. F. L. Foster (afterwards Mr. J. F. V. Fitzgerald). He arrived in 1853, while Mr. Latrobe was Governor, and while the private settlement of McMahon's claim was vainly esteemed a triumph. One who had known him in the colony as a settler endeavoured to warn

Latrobe took credit in his despatch for having, through the proper channel, made liberal compensation to sufferers who had no legal claim, and having effectively set aside the pretensions of "the self-constituted protectors" appointed by the public meeting as "commissioners of the people."

A new Colonial Secretary arrived from England in July 1853. The unpretending Captain Lonsdale gave place to Mr. John Foster, who having been a Victorian settler, was appointed by the Duke of Newcastle to the office which Lonsdale had done his best to fill for a time, but had been ready to vacate from the first. Mr. Foster was not popular, but was thought capable. He was a relative of Mr. Stawell, and though his political studies might have been wider than those of the active and occupied leader of the Colonial Bar, no man doubted that the superior vigour of the latter would easily overbear any opposition which Mr. Foster might venture to make. Captain Lonsdale became Treasurer, still retaining a place in the Executive Council. In those days the Governor could only call to his Council the holders of certain offices designated in Royal Instructions.

Mr. Childers did not, until December 1853, enter within the charmed circle, but he strove to do so, and after he became Collector of Customs on the death of Mr. Cassell, the office of

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him of the smothered disaffection which might at any moment break into flames. The circumstances are recorded in the report of a Select Committee of the Legislative Assembly of Victoria in 1867, in these words, which Mr. Foster did not attempt to contradict, when uttered in his presence: "In the year 1853 I waited upon Mr. Foster before he had been installed one week in office, and urged upon him in the strongest language that the gold-fields were *then* in a critical condition; that I had recently visited them, and was convinced that the system in force there was unnatural and repugnant to British subjects; and that a dangerous explosion was imminent, and might be near at hand. I implored him to take the earliest opportunity to visit the gold-fields and judge for himself, and not by any means to repose confidence in statements which would lead him to think that matters were (as he said he had already heard) in a satisfactory condition. I have a clear remembrance of this conversation; and when in the following August (1853) disturbances actually took place at Sandhurst, and it was resolved at a monster meeting that no licenses should be paid for, I reminded Mr. Fitzgerald (then Mr. Foster) of the conversation, in the presence of his Excellency Mr. Latrobe; and Mr. Fitzgerald, when appealed to by me, confirmed my statement that such a conversation had taken place." (Victoria Parliamentary Papers, 1867.)

Auditor-General was made one of those the tenure of which involved a seat at the Council table.

When the new Colonial Secretary assumed office, it was not expected that he would even by his notable industry produce any marked results. His duties were multifarious. His assent was sought even with regard to the affairs of other departments whose heads were, or were not, members of the Executive Council. On the Governor, however, fell the care and responsibility for everything. Mr. Foster was not the helpmate whom Mr. Latrobe would have chosen, but he loyally accepted him. Falsely flattering themselves that order prevailed on the gold-fields, Mr. Latrobe and his new adviser found trouble on the highways. A private gold-escort was attacked by ambushed robbers, who shot some of the mounted guard and escaped with booty. They were afterwards apprehended (one of them having become approver), and some of them were executed. Runaway convicts from Tasmania escaped in boats and crossed Bass's Straits to the land of gold. A reckless career of crime, however brief, had more charms for them than a life of peace. Some became bushrangers and murderers as soon as they landed. But though they terrified the industrious, there was no sympathy with them amongst the population, and the police usually cut short their career without delay.

Mr. Latrobe's despatch expatiating upon the success of the composition with the owners of the tents destroyed at Castlemaine in May, was dated 6th July, 1853. On the 1st August he addressed a remonstrance to Sir Charles Fitz Roy. He had observed a proposal to abolish the license fee on the gold-fields in New South Wales. Its abandonment there would be fraught with injury to Victoria. Though the Government in Sydney had nothing to do with the suggestion, it alarmed the Government in Melbourne. "My Executive Council concur with me in deeming the proposal objectionable." . . "the propriety of a reduction even, however open to discussion, may be held questionable." . . "As Governor-General your Excellency will, I am assured, be desirous of estimating the probable effects upon the welfare of Victoria in common with other colonies." On the 1st August Mr. Latrobe received a deputation from the miners at the gold-fields at Castlemaine, Sandhurst, and McIvor.

Dr. Jones, and Messrs. Brown and Thompson, were the delegates. They complained of the impoverishment of the gold-fields; privations; inability to invest in land-purchases because of "the squatter land monopoly;" the time which a digger had to spend in learning "the process of gold-mining;" the ill feeling engendered by collection of license fees by "armed men, many of whom were of notorious bad character;" the chaining of non-possessors of licenses to trees and logs; and the sentencing of such non-possessors to hard labour on the roads. Their remedies would be to reduce the license to ten shillings (an abolition of two-thirds), to give an option of a monthly or quarterly license to the applicant—to give intending miners half-a-month in which to look about them, to afford facilities for land purchases, to reduce the penalty for non-possession of license, and the abolition of the armed force for collecting licenses. They said they were loyal, but paid too much to the State. Mr. Latrobe told them he would consider their petition carefully, but that it was not in his power to alter the law, which was the province of the Legislature.

The Legislative Council was about to meet on the 30th August. The deputation, discontented, and originally bent upon mischief, communicated an unfair account of their interview to a public meeting in Melbourne (4th August), which was convened by the Mayor. Some sober citizens went curiously thither, and went away sad. There they learned the lesson which the events of two years had failed to teach them. The wild and ineffectual "scramble" (as Mr. Latrobe called it) by which the Government had vainly striven to collect the gold revenue—the natural irritation at the gold-fields, where the rashness or incompetency of one officer neutralized the wise conduct of others—the unnatural manner in which that irritation had been goaded for their own purposes by designing demagogues, the reviling of the Governor and the vilipending of the Legislature by the 'Argus,' bore fruit which no man at that meeting could misunderstand. The language of some of the delegates brought back the echoes of the rant of Paris clubs. What they wanted they would have. If peacefully, well. If not, a hundred thousand diggers would march like a ring of fire upon Melbourne and take and do as they listed. The wildest

words were unreported. The bulk of the meeting did not disapprove. The element which made a Geelong meeting rampant in 1851 was strong enough to furnish a casual majority in Melbourne in 1853. Resolutions were passed, affirming that disaffection was "fast spreading at the gold-fields," and that it was due to the denial of "political and social rights:" also that the Melbourne meeting pledged itself to assist the movement "to reduce the gold-miner's license tax, and to enfranchise the residents on the gold-fields."

It could not be believed that the Melbourne population subscribed to the decision of the meeting: but it was true that the non-attendance of the industrious citizens left it to the unruly to assert that they represented Melbourne. A Mr. McKillop, who deprecated threatening language, was hissed and put down. Agitation at the gold-fields was stimulated by the assumed verdict of the metropolis. The monthly license fee for September was to be refused. The crowds at Sandhurst (then commonly called Bendigo) were most forward in menace. Mr. Holyoake (said to be a brother of an English socialist) declared that the refusal to pay more than ten shillings was "moral force;" that he had no desire for physical force, but was "prepared for it." On the 20th August, the Sandhurst miners resolved to offer ten shillings as the fee instead of thirty, to write on their tents "No license taken here," and to depute a score or two of persons on the 27th August to pay the fee of ten shillings to the resident Gold Commissioner. On the same day Mr. Latrobe promulgated an elaborate reply to the petition presented to him on the 1st August. He repeated that he had no power to alter a law. He pointed out that the existing Gold-fields Act would expire at the close of the year, and the subject must be duly weighed before that time. He exhibited a melancholy condemnation of the past when he declared that "the direct expenditure caused by the gold-fields from 1st January, 1853, to the end of July, amounted to above £600,000," and that the revenue "in the same period, from gold-fields and escorts, reached only to £464,000." The indirect expenditure was enormous. The road to Mount Alexander alone would cost more than £700,000. He had asked the deputation to specify the despotic acts of which they complained. They had not done so. Out of doors

cases had been mentioned; and, on examination, Mr. Latrobe found that the charges could not be sustained. He pointed out that the license fee was not a tax. "It is a charge made upon the individual for the liberty of seeking and appropriating to his own use that which according to law is the property of the public." The Legislature only could determine the conditions of appropriation. He deprecated unwholesome agitation, hoped for the support of "a very great majority of the licensed occupants of the gold-fields," and looked "to their principle and good sense to yield that obedience to the laws of the country, and support to the authorities charged with administering them, which both may claim from all professing themselves loyal subjects."

For his misunderstanding of the signs of the time Mr. Latrobe was partly indebted to his temperament. But he was also misled by the Chief Gold Commissioner, who on the 8th August furnished an account of a recent tour to Castlemaine, Sandhurst, and McIvor. He did not believe that "the majority of the residents coincided with the views of the agitators." The custom of searching by armed men for unlicensed diggers, he quaintly remarked, "arose from the prevalence of fire-arms being carried by the miners themselves." Altogether the report left Mr. Latrobe in the fool's paradise which it had been found impossible to prevent the new Colonial Secretary from entering on his assumption of office. Mr. Latrobe thought himself

> "fully justified in concluding from the official reports, that from a sense of obedience to the existing law, until changed or modified by proper authority, the loyalty and good sense of the great majority would lead them when the time came . . . and that the licenses for September notwithstanding all the parade of resistance would be taken out without any extraordinarily compulsory measure being had recourse to."

Nevertheless he sent more soldiers and police to Sandhurst, where at the end of August there were 129 of the former and 171 of the latter, 66 of whom were mounted. The 'Argus' at this time showed the first symptoms of reflection. The outspoken defiance of law, both at the gold-fields and at Melbourne, alarmed the editor, who had so vehemently laboured to discredit

the Government. On the 22nd, 24th, and 25th August, he urged the miners to obey the law and work constitutionally. Such was the state of affairs when the vice-regal speech was prepared for the opening of the Legislative Council on the 30th August. That body had recently been enlarged, and Mr. Latrobe had offered a non-official seat to a Sandhurst resident, who accepted it, but being repudiated by the miners did not sit. There were thirty-six elected and eighteen nominated members. Twenty-four had been added to the original body. Unable to strike out a satisfactory course, the Government, though they knew well that the license fee was unproductive as a source of revenue (and Mr. Latrobe had laid stress on the fact in his written reply to the petitioning delegates), resolved to cast the subject upon the table of the Legislative Council without any proposal of their own.

Their dreams were rudely disturbed on the 29th August. A dusty trooper arrived from Sandhurst with despatches written on the 28th by the Chief Commissioner of the Gold-fields. In one he reported that on the 27th a procession of two thousand persons had paraded themselves, fired shots in the air near the camp, and sent a deputation to tender ten shillings as the license fee. A larger meeting was held on Sunday the 28th. Dr. Jones, the delegate (to Melbourne), was in the chair. His colleagues Brown and Thompson were prominent. The latter moved and Holyoake seconded a resolution that they regarded "with contempt the appointment of a nominee to represent their rights." Holyoake said he must be soulless who would accept the disgraceful position. Emmett, the intended nominee, a storekeeper at Sandhurst, posted up notices that he had resigned the post which he had never filled. But it was not only to denounce him that the meeting was held. It was to overawe the Government and the officials. Thompson boasted that the license fee, whether rent or tax, was dead. No law or reason restrained his utterances, but the 'Argus' correspondent, imbued with the spirit which had actuated his principal in former times, wrote: "The mining community have no desire for innovation of any kind excepting that they are determined to have their rights."

The Chief Gold Commissioner and his coadjutor of the police

did not so read the signs of the times. They believed that the confident rioters were ready for violence, and they did not know with how small a band of disciplined men that violence could be repressed. Mr. Wright wrote on the 28th that he had consulted with the Chief Commissioner of Police, and they were "compelled to report that the reduction of the license fee if not its abolition altogether is inevitable." No force would overcome "the passive resistance" anticipated; but "if blood should once be shed it is impossible to foresee the consequences." Whatever was to be done ought to be done at once. As for revenue, "we would submit the immediate introduction of an export duty, and accompanied by such a moderate capitation tax as would be sufficient for purposes of registration." Confusion was in their minds and words. But Mr. Latrobe was too humane to injure others by complaining that he had been deceived. The shock of surprise was succeeded by fear lest violence should endanger life. Mr. Latrobe shrunk with sensitiveness amounting to horror from any act by which the life even of a rioter might be taken. Among his advisers Captain Lonsdale, the Treasurer, notably preserved his faculties. He was taunted by the 'Argus' as having mean abilities. Such as they were they were undisturbed by danger. He bluntly said, "It's a little rebellion, and must be treated as such." But he was not sustained by others. It was resolved to send hasty orders to the Gold Commissioner. No compulsory measures were to be resorted to in enforcing the law, though the Governor could not "release the miners" from their obligations. He was about to propose to raise revenue by increased customs' duties, an export duty on gold, and a small registration fee. Appropriately enough this change of policy of what was called Her Majesty's Government in Victoria was promulgated forthwith (by placards fixed upon trees) in the district, where a ragged crew had dictated it two days before when they refused allegiance to law. "No compulsory means shall be adopted for the enforcement of the license for the month of September." Another humiliation remained. The speech to the Legislative Council required adaptation. They were told that "objections to the present license fee, and the practical difficulties in the way of enforcing it, have forced themselves latterly so strongly upon me that I am disposed to propose

to you its total abolition. . . . I shall be happy to afford the Council every facility and information which may assist its deliberations on the subject." The speech was long, and amongst other things invited the Council to amend the Constitution Act under the sanction of the Crown as promised in the reply to Wentworth's Remonstrance.

Mr. Foster lost no time in communicating to the representative members secret information which it was deemed dangerous to publish. They in a common apprehension and in anxiety for the general weal were willing to co-operate in redeeming the shattered reputation of the Government. Emboldened by absence of explosion, Mr. Latrobe was then persuaded to promulgate a notice (1st September) that the contemplated abolition of the license fee in no way affected "the obligation of any one to pay the current license fees until a new Act may be passed by the Legislature. In the mean time the law must be obeyed. . . ." On one side the triumphant rioters read a notice that "no compulsory means" would enforce law. On the other they were told the law must be obeyed. They distrusted as double-minded a Government which was in reality at its wits' end. Eccentric differences were exhibited. At Ballarat the ordinary license was freely paid for, though there were meetings of the recalcitrant; at Castlemaine, after some show of sympathy with the Sandhurst rioters, 700 licenses were taken out on the day when Mr. Latrobe and his Council shrunk from the law.

The Chief Commissioner of the Gold-fields had hoped that the storekeepers at Sandhurst would conform to the law: but they were deterred by the leading agitators. They begged to be allowed to defer the payment of the license fee until the decision of the Legislative Council might be obtained. Presuming on success the agitators became tyrannical. They threatened to "tar and feather," or to "hang on the first tree," those who opposed them. One, Adams a storekeeper, from whom Edward Brown (the riotous delegate) endeavoured to extort a subscription by intimidation, applied to the police, and Brown was arrested and bound over to keep the peace on the 2nd September. The adroitness of the capture gave spirits to the authorities. Troopers passed to and from Sandhurst with

despatches. The Chief Commissioner of Police arrived in Melbourne on the 1st September, and confirmed the disordered despatches in which he and the Gold Commissioner had announced that they had ventured to disobey the law and to recommend its abandonment. Then Mr. Latrobe did what he ought to have done before; if, as was improbable, the disciplined force at Sandhurst was on the 29th August insufficient to keep order there. Colonel Valiant went to Sandhurst with about 150 of the 40th Regiment, and the Commander of H.M.S. 'Electra' landed a force to assist in guarding the Melbourne Gaol.

On the second September, Mr. Latrobe implored for aid from Tasmania. His envoy was Lieut. Clarke, R.E., who having been Sir W. Denison's private secretary, had been invited to Victoria to take the post of Surveyor-General. "The gravest fact is (Mr. Latrobe wrote) that the apparently sudden change in the demeanour of the mass of the orderly population has been effected by . . . organized system of intimidation and terrorism." [1]

To General Sir Robert Nickle, Mr. Latrobe appealed (3rd September) for "a prompt reinforcement of the military." The military head-quarters were at the time in Sydney. They were soon removed to Melbourne. To Sir Charles Fitz Roy he had the humbling task of explaining on the 6th September the position in which he was placed. On the 1st August he had complained to the Governor-General that mere rumours of a reduction of the license fee in New South Wales were damaging in Victoria. "When that letter was written I had no sufficient cause to suspect the real character of the agitation then set on foot." Events had shown him that the license system could not be maintained, that it was better to recognize the difficulty, "and seek to meet it as best we may. . . I am free to admit that I and my advisers have had little or no choice." "I can only express my regret if (the course pursued) may involve any results which might be productive of embarrassment or disarrangement in your Excellency's views or measures." Mr.

[1] Mr. Latrobe was no doubt conscientious in all that he said. But he was alarmed, and had been deceived. The cancelled notice of 1851 perceptibly led to the disorders of 1853; and, as has been shown, Mr. Foster had not been a week in office when he was earnestly warned that there was imminent danger.

Latrobe did not send to England the answer of the Governor-General, and it was known that Sir Charles Fitz Roy reprobated in despatches to England the conduct of the Victorian Government with regard to the license fee.

Sir William Denison was prompt and outspoken. "Within twenty-four hours after the arrival of the chartered steamer" he hoped that "Colonel Despard, with the head-quarters of the 99th Regiment and two hundred bayonets" would have embarked. From 200 to 300 pensioners would follow if they could be enrolled. "I trust that this reinforcement will enable your Excellency to put down at once an agitation most mischievous in its character, and most detrimental to the interests of the colony." There can be little doubt that if Sir William Denison had been Governor of Victoria in 1853, the agitation at Sandhurst would have been quelled as quickly as Sir Charles Hotham quelled the more serious outbreak at Ballarat in 1854.

The agitators at Sandhurst meanwhile sent down Dr. Jones and Dr. Owens to ensure their triumph. At a meeting in Melbourne, on the 6th September, they carried resolutions commending Mr. Latrobe's prompt and decisive action in abolishing the license fee. The Mayor, J. T. Smith, who was in the chair, succeeded in eliciting loyal sympathies by some vigorous remarks with which he closed the meeting.

It was known that Mr. Latrobe was anxious to be relieved from his office, and Sir. W. Denison was spoken of by report as his successor.[1] A Select Committee reported speedily upon the crisis. A majority was opposed to an export duty on gold.

The Legislative Council[2] hastened to pass a short Act enabling the Governor to alter the license fees. A license for one

[1] Writing to his mother, December 1853, Sir W. Denison said: "I confess I shall not object to take charge of the Government of Victoria, as I feel convinced that I could do much good there in every way."—'Varieties of Vice-Regal Life,' by Sir W. Denison, vol. i. p. 228.

[2] Not unanimously. There was one division, 33 against 11. The Mayor, who had, in the chair at the Melbourne public meetings, endeavoured to rouse the loyalty of the people, strongly deprecated the manner in which the Legislature lent itself to the abandonment of the functions of government. The 'Argus' found its popularity wane when it counselled moderation. On the 15th September, it declared that though its motives had been impugned, "even the miners might come to the conclusion that during the recent crisis they had in reality no more sincere friend . . . ."

month was to cost £1; a license for three, six, or twelve months was to cost at the rate of £2 for three months. Those who had taken out licenses according to the old law were to have credit for their payments. The preamble to the Act did not refer to the riots, but copied the New South Wales Act of 1852 in referring to Her Most Gracious Majesty's pleasure in placing the gold revenues at the disposal of the local Legislature.

No seignorage was to be raised in shape of an export duty. A statute book teaches much, but the Act of 14th September, 1853, passed almost in panic, and citing the Queen's grace as its motive, would of itself convey a false impression of the history of the time. It may be noted that in 1853 the 'Argus' did not preface its reports of the Legislative Council with the insulting heading with which in 1852 it commended the Legislature to popular contempt. It deplored (31st August) the "sorrowful sight of an obedient and well-meaning people gradually becoming ungovernable, and led into utter lawlessness by the very men whom they pay to protect and guide them."

The Duke of Newcastle in January 1854 acknowledged Mr. Latrobe's despatches briefly; and soon afterwards appointed Sir Charles Hotham to the post which had been made so difficult to fill with peace and honour. Sir C. Hotham's career in the navy had been brilliant. At the Parana river, he had in 1845 earned admiration on water and on land. After destroying batteries by cannonade, he had with a few hundred sailors and marines defeated on land a force of nearly ten times their number. Subsequently knighted, he was employed in a diplomatic mission to Paraguay, and in 1852 Lord Derby's Government sent him on a joint mission with a French officer to Brazil and the Republics of the river La Plata. Acquitting himself with distinction he was selected as Governor of Victoria.[1]

[1] He was allowed by the Duke of Newcastle to stipulate confidentially that if war should break out with Russia he might give up the civil appointment. When war became inevitable he reminded the Duke, who temporized until he could consult his colleagues. After consulting them he not only refused to adhere to the original proposition, but added that if Sir C. Hotham should refuse to go to Victoria he would not be allowed to serve in the war. He admitted his original promise, but said he was only one of the Ministry, and he could not keep it. Thus while sailing to Australia the new Governor's heart was with his comrades in the war.

The sudden change of the law in Victoria could not but influence the neighbouring colony. To collect £18 a year from each miner in New South Wales and only £8 in Victoria was not to be contemplated. A Select Committee of which Wentworth was chairman had been appointed (8th June) by ballot, to deal with a Bill for management of the gold-fields. Various petitions on the subject (some of them from the Turon river) were referred to the Committee. On the 9th August, Sir Charles Fitz Roy laid before the Council Mr. Latrobe's letter of the 1st August, reprobating a reduction of the license fee. On the 20th September Wentworth brought up a report. "A majority, in consequence of the vacillating policy pursued in the colony of Victoria, and from no other cause, are in favour of reducing the license fee to ten shillings a month. . . Had it not been for the course recently pursued by the Government of the sister colony your Committee would not have suggested that the license fee should be reduced below £1 per month." The royalty on matrix gold was to sustain an equivalent reduction.

The Committee did not wait for the result of the labours of the Victorian Legislature; but it guarded against ill-consequences if any export duty should be required during prorogation. It recommended that the Governor should be armed with temporary power to issue regulations for collecting a seignorage in shape of an export duty, and declared that while consenting to the reduction necessitated by "the sudden and unexpected alteration" in policy in Victoria, it could "not but deplore that, in a great intercolonial question like this, any single colony of the Australian group should have the power to legislate at all. They conceive that such legislation should be entrusted only to a General Assembly, wherein should be duly represented the interests and opinions of the whole of such colonies."

It may be remembered that an armed body had been organized at the Turon river early in 1853 to resist the Government, but that the firmness and prudence of the authorities sufficed to vindicate the law. The comparatively small population at the New South Wales gold-fields presented fewer difficulties than Mr. Latrobe had to encounter in Victoria, but the character of Sir C. Fitz Roy's Government was at least an important

factor in the difference. Wentworth's Select Committee recorded their opinion,[1] that the decided course which was adopted at the Turon was

"the true and only way of satisfying the then deluded multitude that what is denied to justice will never be extorted by clamour; that the right of petition, temperately and properly exercised, is all-sufficient to procure the redress of any real grievances under which any portion of the population may suffer; and that as redress ought not, so it will not, be conceded except through the intervention of this the constitutional remedy, which is in the power of every class, and every individual really aggrieved."

The report, which was like a funeral sermon on the reputations of Mr. Latrobe and his advisers, did not recommend the imposition of an export duty, and it was not until the beginning of 1857 that an Act was passed for the purpose in New South Wales. When Mr. Latrobe's last despatches were written in May 1854, he said that there was good order on the gold-fields. In January 1854 he had reported a restless desire "to rouse a spirit of opposition to the law among the mining population," in spite of the "concession made," and an attempt (which failed) "to organize what was termed a 'Diggers' Congress.'" He also stated the ominous fact that the Supplementary estimate for 1853 exceeded one million sterling. It may be well to follow the consequences of the gold discovery, and of Mr. Latrobe's difficulties, up to their full development in an outburst at Ballarat in 1854, which was the result of the events of 1853, and of the audacity they engendered in the disaffected.

Sir Charles Hotham was a man of different mould; firm, able, an excellent linguist who had been employed in foreign lands, he knew much of the ways of the world; but his manner was sometimes abrupt, and his enemies complained that it was imperious. He was loyal to the Queen, and ready in the field or in the Cabinet to wear out his life in her service. That his constitution, somewhat shattered by the African Coast climate finally gave way when weakened by assiduous devotion to the

[1] The Committee was composed of Wentworth, James Macarthur, Charles Cowper, Deas Thomson, G. R. Nichols, Bligh, Darvall, Murray, Macleay, and W. Manning; and its opinions carried great weight in the community.

desk, may be mentioned, together with the fact that the intrigues of some of those around him increased his difficulties, from the moment that they found that he was determined to scrutinize the manner in which appointments had been lavished, and funds had been squandered. Long after he had pressed his resignation upon the Secretary of State, he toiled unflinchingly through departmental papers which required his sanction, and which in some cases were arranged so as to cast upon the Governor as much trouble as possible.

He had, on his arrival, been received with exuberance of loyal welcome in Melbourne. He had made a tour of the gold-fields; and at Ballarat, Avoca, Maryborough, Castlemaine, and Sandhurst, his reception was enthusiastic. At the latter place his horses were taken from the carriage; and amidst a crowd estimated at 25,000, men dragged it to the town. He had said at a banquet at Geelong that, by the principle of the Constitution already chosen in the colony, all power proceeded from the people, and that it was on that principle he intended to act. He did not explain the term—people. It might mean the dregs of transportation in some localities. Men looked gravely at one another, and wondered whither the Governor's principle would lead him;—into what chaos it might plunge the colony where, already, a rabid orator from the gold-fields had been applauded in Melbourne when he talked of diggers surrounding Melbourne with a ring of fire. But the unwise words were caught up at the gold-fields as the new gospel of Government. Sir Charles Hotham must have felt misgivings, for at Sandhurst he told the people, after he had received a petition for the abolition of the license fee, that "they must pay for liberty and order;" and he was able to tell the Secretary of State that he was "loudly cheered." It was known that in the end of June, when some turbulent spirits at Sandhurst discussed their grievances, and proposed to drive the Chinese population from the Sandhurst gold-fields, the new Governor had warmly commended the measures taken by Mr. Panton, the resident Commissioner, and despatched a reinforcement of fifty mounted troopers to his assistance.

That the miners were not paying what was due by law was clear. Throughout the whole colony they had not taken out

16,000 licenses in July and August 1854. Sir Charles Hotham arrived in the end of June, and several hundred more licenses were paid for in August than in July. From less than 14,000 in July they rose to 18,436 in September and 19,949 in October, after which they declined to 15,278 in November and 8059 in December, when the subject of a gold revenue was being dealt with by a Commission. During the whole period the population at the gold-fields was estimated as containing many more than 60,000 men, besides women and children. The storekeepers' licenses were about 300. The Treasury meanwhile, under the wasteful hands of Mr. Latrobe's advisers, presented an alarming appearance. The total available revenue was £2,479,461. The total contemplated expenditure was £3,564,858. Sir Charles Hotham found a deficiency exceeding £1,000,000.

He had been warned in England of the danger. The Duke of Newcastle showed him the Victorian Estimates for 1854, and said: "This is the difficulty you have to face. This enormously extravagant expenditure will, unless arrested, ruin the colony." The Governor strenuously devoted himself to the task of retrenching expenditure, and guarding against loss of revenue. He appointed a Committee to investigate the finances; and from the moment of his doing so, there was a combination against him, which was abetted by those whose position demanded different conduct. In July he called the attention of the Chief Commissioner of the Gold-fields to the "irregularity which existed in the collection of the license fee." On the 13th September it was ordered by a circular that the Assistant Commissioners should go out twice a week "to search for unlicensed miners." The order was deemed unwise; and backed by a knowledge of the disloyalty rendered to the Governor by some about him, subordinate officials were not always hearty in their allegiance.[1] Moreover, the task was odious, and the Governor was ill-advised in doing anything which might provoke discontent. But he had (according to a statement of Captain Kay, his private secretary) been told at

[1] Mr. Foster, the Colonial Secretary, stated in evidence (1867) that he disapproved of the circular, but could not say whether he "absolutely" remonstrated against it to the Governor. (Report of Committee. Case of Mr. Fitzgerald. Parliamentary Papers. Legislative Assembly. 1867. Victoria.)

Downing Street[1] that Mr. Latrobe had yielded to intimidation, and that probably the question would never be settled without violence; and though, according to Captain Kay's evidence, he disapproved of the license fee on principle, he determined to carry out the law until he could cause it to be altered.

Sir Charles Hotham's narrative of his tour to the gold-fields was dated 17th September, 1854. On the 6th October a miner named James Scobie was killed in a scuffle, at Ballarat, and suspicion was attached to one Bentley, as one of his murderers. Bentley, who was an ex-convict from Tasmania, kept a disreputable public-house called the Eureka Hotel. He, with his wife and a man named Farrell (both ex-convicts), were brought before the magistrates. One J. Dewes was the presiding (police) magistrate. He had been appointed in November 1853. He was a corrupt creature whom, if his character had been known, Mr. Latrobe would not have appointed. A man who was examined before a Commission in December 1854, deposed that he himself, being an applicant for two licenses (an auctioneer's and a wholesale spirit license, costing together £130), bribed Dewes with £200 in order to procure them. Through Dewes' agency the charge against Bentley was dismissed, although there were honourable men on the Bench ignorant of the characters of Bentley and Dewes. The dismissal was a spark thrown upon materials ready to burst into flame. The withdrawal of the increased license fee in 1851, the abnegation of the functions of Government in 1853, had encouraged the disorderly. There were insidious leaders ever ready to avail themselves of disaffection, and convert the Constitution, in the words of Dr. Lang (1851), "in all likelihood with violence, into a system of government in which Great Britain will have nothing to say." The bulk of the miners at Ballarat had no such designs, but they were angered by what they believed to be a great wrong—the shielding of the murderer of one of themselves. They were, according to much testimony, goaded by the increased vigilance in collecting license fees under Sir Charles Hotham. Thousands of them rushed (17th October)[2] to Bentley's house, and sacked

[1] Parliamentary Papers. Legislative Assembly. 1867. Victoria.

[2] The dates are taken from the Blue-books. They are erroneous in some published accounts.

and burned it, in spite of the efforts of the authorities, who barely extricated the rascal Bentley and his accomplices from sudden death by taking them to "the Camp." The evil-designing thought they saw their opportunity. Mass-meetings were held. Subscriptions were collected for the prosecution of Bentley; but as Sir Charles Hotham promptly offered a reward for the apprehension of the murderers, the money was returned. Bentley and two male accomplices were arrested, tried (20th November), convicted of manslaughter, and sentenced to three years' hard labour on the roads. The woman was acquitted. A Commission was appointed to inquire concerning Mr. Dewes. It reported that he had obtained "loans" which tended "to subvert public confidence in the integrity and impartiality of the Bench." The Governor dismissed him (20th November), and erased his name from the Commission of the Peace. Sir Charles Hotham also collected at Ballarat, within four days of the burning of Bentley's hotel, about four hundred and fifty military and police. He selected an able officer[1] to command on the spot, and instructed him to use force when "legally called upon to do so, without regard to the consequences which might ensue." Three persons were tried for complicity in the burning of Bentley's premises. They were convicted in Melbourne, and sentenced severally to three, four, and six months' imprisonment; but the jury accompanied their verdict with an opinion that they would have been spared their painful duty "if those entrusted with the Government of Ballarat had done their duty."

Confident of support in the metropolis which furnished a sympathetic jury, the agitators at Ballarat prosecuted their designs. A Ballarat Reform League was appointed. Mr. J. B. Humffray was its Secretary. It adopted, on the 11th of November, a code for its guidance. Being unrepresented the people had been "tyrannized over;" and it was their duty to resist and, if necessary, to remove the irresponsible power which so "tyrannized over them." The League did not wish to effect an immediate "separation from the parent country, . . . but if

[1] Captain J. W. Thomas, 40th Regiment. One of those able, courteous, and determined men who maintain the character of their country wherever its flag is waved. He was beloved and respected by his men, who would follow him to the death.

Queen Victoria continues to act upon the ill-advice of dishonest Ministers, . . . the Reform League will endeavour to supersede such Royal Prerogative by asserting that of the people, which is the most royal of all prerogatives." Total abolition of Gold Commissioners and of all license fees was essential. Ballarat was to be divided into districts, cards of membership were to be issued, and the business of the League was to be conducted in a tent.

Meanwhile Sir Charles Hotham had been maturing his plans for reform. He appointed a Commission, of which Mr. W. C. Haines was to be Chairman, and Messrs. W. Westgarth, J. P. Fawkner, J. McCulloch, J. F. Strachan, W. H. Wright (Chief Gold Commissioner), and the Auditor-General (E. Grimes), were to be members. They were to report on the whole question of administration at the gold-fields, and the raising of revenue therefrom, for the protection of the miners and other purposes. They had blank charter as to their labours and recommendations, but the Governor thought that though an export duty of one shilling an ounce upon gold might not lead to smuggling, or to the dangerous practice of carrying gold, and thus tempting bushrangers and murderers—a higher rate might be fraught with grave objections. He wrote a letter on the subject to the Chairman on the 16th November. On the 23rd of the month he furnished a financial message to the Legislative Council, in which he showed that the estimated deficiency was, in the general revenue £354,000,[1] in the territorial revenue £731,000. But he did not succeed in fastening public attention so firmly upon the scandalous state of the finances as to divert it from the critical condition of the gold-fields.

The pestilent disturbers who desired no peace were dissatisfied with the attitude of the Governor. True, Bentley was convicted, but so were the incendiaries of his house. They relied upon the irritation of the diggers to enable them to practise upon Sir C. Hotham the intimidation which had in August 1853 prevailed with Mr. Latrobe. The same method was resorted to.

[1] Fractions of thousands are omitted here, as they were unconsidered by Mr. Latrobe's Council. The figures do not imply that the territorial revenue was itself over-drawn; but that beyond the portion of it which was available for internal uses Mr. Foster and his colleagues had in Mr. Latrobe's time seized upon a portion not available by law. A large part of the moiety available for immigration had not been appropriated thereto.

Delegates were sent to Melbourne with "demands!" They were George Black and Kennedy. The former was proprietor of a paper called the 'Digger's Advocate,'[1] published in Melbourne, but for a time circulated widely amongst the miners, whose wrongs, real and alleged, it vehemently denounced. He, with J. B. Humffray, H. Holyoake (a former agitator at Sandhurst), F. Vern, Hayes, Kennedy, and others, had hotly denounced the Government; but as the tongue seemed about to yield to the rifle, Humffray and one or two others showed symptoms of cooling. Humffray anticipated Black and Kennedy by arriving in Melbourne before them, and consulting Mr. J. P. Fawkner on the situation.

On Monday, 27th November, he accompanied the delegates in their deputation to the Governor. Black opened the proceedings with a "demand for the release of Fletcher, Macintyre, and Westerby, in gaol for having been concerned in the burning of the Eureka Hotel." Sir Charles Hotham asked if the word "demand" was used advisedly. Black, nothing daunted, said it was. The diggers objected to the word "petition." Black did not use the word as a threat. He believed the word "demand" was "strictly constitutional." The men ought not to be in prison: they were justified in burning the hotel when the magistrates failed to dispense justice. The Governor reminded him that on the "very instant" of hearing of the dismissal of the first charge against Bentley a new prosecution was ordered. Black admitted the fact, and that the diggers knew of it. The Governor told him that by demanding the release of the men he was taking the law into his own hands, and setting aside the verdict of a jury to which every Englishman was amenable; and from which, if the Governor should depart, a severe blow would be inflicted upon the welfare of the colony.

Humffray suggested that the men might be pardoned by "an act of grace." The Governor (who had previously ordered the release of an American citizen, Carey, whose countrymen had constitutionally petitioned for it through their consul) reminded the delegates of that fact. "Have the Ballarat diggers taken the same course? No; and I must take my stand on the word

[1] The paper had been in the hands of Messrs. Thompson and H. Holyoake previously.

'demand.' I am sorry for it, but that is the position you place me in." Kennedy admitted that the Governor had a right to object to the word "demand"; but could not hope that the "infuriated men" at Ballarat would avoid bloodshedding unless the delegates could return with the prisoners, even though such a course might be "thought inconsistent with the dignity of the British Crown." The Governor reminded the delegates that he had appointed a Commission to inquire into all grievances at the gold-fields, and Black admitted that Mr. Fawkner's name in it gave satisfaction, but the diggers thought they ought to be consulted as to the constitution of Boards. In reply he admitted that the dismissal of Dewes on the Report of a Board was satisfactory proof of the readiness of the Government to do all that was practicable.

The Governor said all were accountable to those above them, and he regretted that the delegates had made known their wishes as demands. "You have placed me in a position which renders the release of these men impossible. . . Tell the diggers from me, and tell them carefully, that this Commission will inquire into everything, and everybody, high and low, rich and poor; and you have only to come forward and state your grievances, and in what relates to me they shall be redressed." Black supported Humffray's suggestion—an act of grace. It would take away "excuse for a riot." The Governor had too good an opinion of the diggers at Ballarat to believe that they would set themselves against the law. He reminded the delegates, and Black admitted, that the sentences of the prisoners were mild.

Then the subject of representation of the miners was discussed. A Bill had been passed in 1853 to confer the suffrage upon holders of miners' rights, and had been sent to England for the Royal Assent, as by the Constitution Act the Governor could not make it law. Humffray, the Secretary of the Reform League, was so ignorant of his business that he had to ask information about the Bill. Sir Charles Hotham professed anxiety to confer the franchise on the diggers. If they would "now elect a representative" he would make him a nominee member of the House. Black said one member would not be enough, and Sir C. Hotham said he had no means of appointing

more. He would do what he could. Desultory conversation ensued about the new Constitution Bill already transmitted to England. In this Mr. Foster took part; the Bill having been passed in the time of Mr. Latrobe. Mr. Black urged the request of "the married men of Ballarat," that facilities might be afforded to them for settling on the land. The Governor was anxious that such provision should be made. Mr. Kennedy, in a parting word, entreated the Governor to change his mind about releasing the prisoners, and the deputation withdrew, not quite certain whether the firm but temperate demeanour of the Governor would be sustained by action. To the Secretary of State he wrote that as "the surest way to prevent a conflict is to arm in time, I assembled a force of 430 military and police at Ballarat, and requested the Major-General to entrust the command to Captain Thomas, 40th Regiment, who on previous occasions had shown that he possessed the skill and ability required for the emergency."

Already the intrigues of some about him threw difficulties in the Governor's way, but he received from known and unknown quarters important information. When violence was imminent he communicated his instructions in cypher[1] to the officers at Ballarat. They were not all of an arbitrary nature, for the resident Gold Commissioner, Mr. Rede, testified afterwards that one was an order "not only not to arrest, but not even to suspect," a certain person whom Mr. Rede wished to arrest. Mr. Holyoake was despatched to other gold-fields to stir up mutiny. On the 2nd December he was welcomed at Sandhurst, where he had been an agitator in 1853, and it was resolved that every man should wear red ribbon in his hat; "not to be removed until the license fee is abolished." At that date many persons dreaded lest the foreigners on the

[1] He was upbraided for setting aside the Colonial Secretary by this process. It was broadly asserted after Sir C. Hotham's death that it was his common practice. An examination in 1867 disproved the assertion. It was shown that the cypher despatches were only resorted to at the time when martial law was proclaimed at Ballarat. It was also shown that Mr. Foster was aware that they were sent, and decyphered one of them before handing it to the private secretary. Yet his friends complained that they were sent without his knowledge of the fact that they were sent. (Victoria. Parliamentary Papers; Report of Select Committee (1867), Mr. Fitzgerald's Case.)

gold-fields, making common cause with lawless ex-convicts, and the political agitators, might band together in numbers which would, even if controlled in the last resort, cause serious bloodshed. Sir Charles Hotham earnestly sought the co-operation of foreign consuls and of the Roman Catholic Bishop in averting such a catastrophe. But many at Ballarat laboured to produce it. The mass of the diggers was not disloyal. But the movers of sedition dreaded nothing more than wholesome reforms. The appointment of a Commission of Inquiry might lead to peace. They strove to inflame the public mind lest peace should thwart their machinations. On the 28th November a detachment of the 12th Regiment was hooted on arriving at Ballarat, a waggon was over-turned, and a drummer was wounded by the resolute crowd who were maltreating some of the soldiers, when mounted troopers rushed to the rescue.

On the 29th a mass meeting (stated at 12,000) was held at Bakery Hill, Ballarat. A magistrate, with two witnesses, attended in compliance with the Governor's commands. Black, Kennedy, and Humffray reported their interview with the Governor. A flag of insurrection was hoisted. Humffray, counselling moral force only, was jeered at as a trimmer. The determined conspirators against Government assumed control of the movement from that hour. Their active agents were chiefly foreigners and Irishmen; but they led a silly flock, who had no disloyalty to the Queen in their minds. The Irish were looked upon as ready to rise against authority, and the first resolution denounced the calumnies of those who called them disturbers of the peace in Ireland. The second was moved by Mr. P. Lalor, and seconded by his countryman, Mr. Brady. It decided that on Sunday, the 3rd December, a meeting of the Reform League should, at two o'clock, in the Adelphi Theatre, elect a Central Committee.

Vern, a Hanoverian, moved that the license fee was an unjustifiable tax on free labour, that licenses should be burned, and that the united people should defend unlicensed persons. A holocaust of licenses was made in response to his speech. Mr. Black then moved that as there were to be no more licenses there was no use in resorting to Commissioners to settle disputes,

and arbitration should be the rule. It was determined that after the 15th December no man should be "protected" unless he had joined "the League." Mr. Humffray moved and Mr. Kennedy seconded a resolution, protesting against the common practice of marching military bodies "into a peaceable district with fixed bayonets." If it were persevered in, the meeting could "not be responsible for similar or worse deeds from the people." All the resolutions were carried with yells of triumph by confident thousands, tickets of membership of the League were issued, the smoke of burnt licenses rose like incense to a god of misrule, and shots of defiance were fired in the air. Meanwhile the wary Captain Thomas had his little band ready for action.

A wretched creature named Henry Seekamp was editor of the 'Ballarat Times.' He vilified the soldiery, whom he accused of brutality, only redeemed by their cowardice, which would make them an easy prey for the offended diggers. "The League has undertaken a mighty task—that of changing the dynasty of a country." Sir Charles Hotham had been misunderstood by the delegates if they thought he could be overawed by numbers. Confident in the courage and ability of Captain Thomas, he issued instructions that licenses should be examined according to custom. On the 30th, Commissioner Johnstone went forth to a place called the Gravel Pits, upon the duty; but, with the accompanying police, he was pelted with stones. More police were sent to aid him, and Commissioner Rede followed. The mob told him they would take out no licenses, and asked him to send away the police. Rede told them he would maintain the law while it was in force, reminded them of the Commission appointed by the Governor (as he did so they cheered the mention of Mr. Fawkner's name), and appealed to the well-disposed to retire. Some retired, but as it was rumoured that Vern and Lalor's men were expected from Eureka, Rede read the Riot Act and sent for the military. The mob was dispersed, and Commissioner Johnstone "made the people show their licenses." But shots had been fired. A policeman's head was cut open. Several prisoners were taken to the camp. Mr. Rede said (30th November) that if there had been serious resistance there "would have been considerable

slaughter. Our object was gained; we maintained the law." He asked for instructions for future guidance. "The whole affair is a strong democratic agitation by an armed mob. . . The abolition of the license fee is a mere watchword. All meetings, public or private," ought to be put down.

Captain Pasley, R.E., wrote on the same day. He, though holding a civil appointment as Colonial Engineer, was an acting aide-de-camp to Captain Thomas. Very strong measures were necessary, and "sedition must be put down by force." More soldiers were needed to enable the military to act on the offensive. Martial law should be available. An armed meeting was being held on Bakery Hill, and it was too late in the day to disperse it, as the troops could not regain the camp in daylight. The Governor might feel assured that Pasley did not recommend "strong measures without good grounds and due consideration."

Meantime "the Commander-in-Chief" of "the diggers under arms" pressed horses and other requisites into his service. His foragers gave receipts for what they seized.[1] When the prisoners were arrested by the police on the 30th, the crowd collected again at Bakery Hill, and a change was made in the arrangements of the insurgents. Many of them at the Eureka were Irish, and their countryman, Peter Lalor, in the enthusiasm of courage or other stimulant, volunteered, and was accepted, as Commander-in-Chief on the 30th November. Hundreds swore to follow him. Drilling was immediately commenced. Lalor was said to have recommended pikes to those who could not procure fire-arms. The pikes would "pierce the tyrants' hearts."[2]

That night Black, the delegate, and an Italian named Raffaello were sent as a deputation to the camp to demand the release of the prisoners. With them went a Roman Catholic priest named Smith. Mr. Rede declined to release the prisoners captured for assaulting the police. At midnight the priest returned to repeat

[1] One of them was—"Received from the Ballarat Store, one pistol for the Comtee. X. Hugh McCarty. Hurra for the people." Another—"The Reform Lege Comete, 4 drinks, fouer shillings; 4 Pies for fower of the neight watch patriots." X. P.

[2] Raffaello imputed these words to Lalor. A witness swore (at the trial of Joseph in February 1855) that they were used by Raffaello himself. I copy the statements and state their sources, but vouch for neither of them.

the request, with the same result. The camp was under arms all night. Captain Thomas, walking in a crowd, felt a slip of paper thrust into his hand. On entering his quarters he found written in pencil—"Trust no one about you." No warning was needed to make him wary.

Nursed in intrigue, the foreigners,[1] who had been members of secret societies in Europe, were conspiring with the worst class of the Irish on the gold-fields, and no vile art was wanting among the desperadoes whom Italy, Germany, and France had yielded to the Australian mines. The delegates, Black and Kennedy, had been sent to Creswick (eleven miles from Ballarat) to muster recruits for the army of the League. The new men sang the Marseillaise on their march. Kennedy flourished a sword.

All work at Ballarat was suspended after the 30th. The swarming population talked of nothing but the "digger hunt" of that day. A patrol was established on the roads to Melbourne and Geelong to intercept reinforcements. Arms and ammunition were seized, and more than a thousand armed men paraded publicly in sight of the camp, robbing stores, forcibly enrolling recruits, and stealing arms. The camp was to be attacked. On the night of the 1st December dropping shots were fired into it. On the 2nd, Captain Thomas notified that no lights would be allowed in the neighbourhood of the camp after 8 p.m.; that no discharge of fire-arms would be permitted on any pretence, and that persons disobeying his order would be fired at. An attack on the camp was expected on the morning of the 2nd. All in it were under arms throughout the night.

The 'Ballarat Times,' of which Seekamp was editor, periodically produced virulent articles to excite rebellion. When he was convicted in January of seditious libel, he averred that one Manning had written against his express orders. Manning wrote

[1] The 'Argus,' 28th November, warned the miners that Sir C. Hotham was not chargeable with past misgovernment, and was one who would "not bear to be trifled with." On the 4th December it objected in an article (written before, but published after, the capture of the stockade on the 3rd) to foreigners' "meddling with our quarrels," and assumed the function of peace-maker. Forgetful of its own complicity in sapping the foundations of order, it averred that it was "absolutely incredible" that in such a country and climate the Government should have become insolvent," and the people be "arming themselves to cut one another's throats."

in November that there ought to be a complete sweep of the Ægan stables ("meaning Augean[1] stables," the indictment said).

There was another contributor, trained under the eye of the arch-disturber, Dr. Lang. Dr. Lang's son had been manager of a branch Bank at Ballarat. The accounts were in disorder. Young Lang and a fellow-officer, Drake, were not at first suspected of wrong-doing, but an officer was sent to take charge of the cash in the beginning of October 1854. Investigation brought serious defalcations to light. Lang and Drake set up a gold-broking establishment. When called upon to assist in clearing up the accounts they were unable to do so. A gold-broker named Burtchell, whom they accused of abusing his confidential access to the Bank (the premises of which were ill-adapted for the work), was arrested, but released when no evidence could be produced against him. He sailed to England. The principal Inspector of the Bank visited Ballarat, and (after inquiry) publicly notified (20th October), that Lang and Drake were dismissed "in consequence of defalcations in the accounts and cash." Further examination led to the arrest of Lang and Drake for embezzlement. While under committal Lang wrote a leading article for the 'Ballarat Times,' which appeared on the 2nd December, 1854, while all the worst elements of disorder were fermenting at Ballarat. In language worthy of his father's spirit, he said: "If the demands of the diggers are not satisfied, the gathering clouds of popular indignation will burst like a whirlwind over guilty and unsuspecting heads, and sweep the length and breadth of the land."[2] While all industry was arrested the crowd fastened their attention upon the provocations of their newspapers, and the harangues of the conspirators.

At four o'clock in the morning of the 2nd a body of men was seen at Bakery Hill, and Captain Thomas sent troops thither.

[1] Seekamp explained after his conviction but before he received sentence that "Augean" was written "Ægean," and that "Augan" was a mistake of the compositor. ('Argus,' 27th January 1855.) Such were the men who thought themselves worthy to change a dynasty. Two persons on the staff of the 'Argus' (Semple, and Ebenezer Syme) gave bail for Seekamp, until he was called up for judgment, 26th March, 1855.

[2] To mitigate his own sentence Seekamp obtained affidavits from Manning and Lang as to their authorship of the seditious articles. Lang was in gaol when he furnished this proof of the genuineness of his descent.

The armed mob melted away. At eleven o'clock crowds collected near the camp, having revolvers concealed on their persons. Told to go away they said they were in fear of the insurgents, and wished to become special constables. Two magistrates were sent to swear them in, and were laughed at. The Riot Act was read, and mounted police dispersed the crowd. It was thought that 2000 armed men were collected, of whom more than 1200 were at Bakery Hill inviting the troops to attack them. A band of two or three hundred marched to take the camp in rear if its garrison should be weakened by a sally, and four hundred prowled in readiness near the front. The manufacture of pikes went on briskly meantime at the rebel encampment. In the afternoon a Gold Commissioner, Mr. Amos, who had been stationed at the Eureka gold-field (one mile and a half from Ballarat), reached the camp with tidings that armed rebels had made him prisoner for a time, and had seized his horse. At the same time Captain Thomas heard that an entrenched camp was being formed at Eureka "with the assumed intention of intercepting" the troops expected from Melbourne under command of Major-General Nickle. The General had started from Melbourne on the 1st December, with the remaining companies of the 12th and 40th Regiments, and two field-pieces, and two howitzers, the latter manned by sailors from the ships-of-war. "I did not think it prudent (Captain Thomas wrote, 3rd December) to attack (the rebels on that day) because they were not collected in any one spot, and the safety of the camp would have been risked had a large portion of the force been withdrawn. I determined, however, to attack their camp at daylight the next morning."

The strain of continuous watching made the men and officers weary, and it was known to their commander that they longed for the order which would put an end to suspense. But he kept his counsel. Not until all had retired to their posts did he inform certain officers of his intention. Not till the moment of departure did the men know whither they were going. He had judged rightly that on Saturday night some of the rebels would go to their homes—that amongst such a motley crew some would indulge in dissipation—and that he would find at the rebel stockade deliberate plotters upon whom punishment might

justly fall. One portion, it was believed, had been detached to fall upon the Major-General. At half-past two o'clock on Sunday morning 100 mounted men and 176 foot-soldiers and police were assembled.[1]

Captain Thomas, upon whom the Governor had wisely devolved the sad duty of making the necessary example (before the less active General could reach the scene), briefly signified to the men that they might want to use their weapons, and at 3 a.m. led them away, leaving the camp in charge of Captain Atkinson, 12th Regiment. Mr. Rede, the Gold Commissioner, remained in principal civil charge. Mr. Amos accompanied the troops as guide of the cavalry to the stockade. Captain Pasley, R.E., was a volunteer, and Messrs. Hackett (Police Magistrate), and Webster, Civil Commissary, joined the small band of 276 men, who went forth against overwhelming numbers. Straggling shots in the distance indicated that the rioters had kept watch and were giving signals. Silently the little band moved on, and in about half an hour reached the stockade. The left flank and rear of the place were threatened by part of the mounted force thrown forward for the purpose. The remainder, with the foot police, were kept in reserve, while the 12th and 40th detachments were extended in skirmishing order with supports, in front of the entrenchment, and of a barrier of ropes, slabs, stakes, and overturned carts. The signal shots had not been in vain. At 150 yards' distance a sharp fire, without previous challenge, rattled amongst the soldiers. The bugle to commence firing was sounded by order of Thomas; the troops advanced, giving and receiving a brisk fire; Thomas brought up the supports with the words "Come on, 40th;" the entrenchment was carried with wild hurrahs, and a body of men with pikes was immolated under the eye of the commander before the bugle to cease firing recalled the soldiers from the work to which they had been provoked. The rebel flag was pulled down with wild shouts. All persons found within the entrenchments were captured, and some of the many fugitives were intercepted by the cavalry.

[1]

Mounted Military Force ...	30	Foot: 12th Regiment ...	65
Mounted Police	70	Foot: 40th Regiment ...	87
	100	Foot Police	24
			176

Captain Thomas having sent a mounted detachment to resume the Eureka camp which the rioters had taken from Mr. Amos on the previous day, returned with 125 prisoners to Ballarat. Some of them who appeared not to have been concerned in the fighting were dismissed on the spot. Amongst them was Raffaello, who declared to Captain Thomas that he had not been captured in the stockade, but who, with a vanity not uncommon in conspirators, subsequently published a statement claiming credit for much of the violent counsels of the rebels, and for having been actively engaged in the stockade after midnight on the 2nd December.[1] Raffaello busied himself in attending to the wounded, and was subsequently apprehended by the police as a well-known leader in the disturbances. There was one rioter whom Captain Thomas saved from sudden death as the prisoners were mustered at Eureka. It was whispered and ran from mouth to mouth that Manning, a contributor to the "Ballarat Times," which had goaded the mob, and reviled the military, was there. Instantly, heated as they were, and savage at the loss of comrades, some of the fiercest made a rush to destroy him, which only the unbounded influence of their Captain could arrest. The miscreant meanwhile displayed such abject terror that his comrades shrunk from him in disgust. When the troops reached the camp with 125 prisoners, Thomas released several of whom he was "not satisfied that they had been in the engagement;" but he reported (3rd December) that subsequent arrests made "the number now in custody 114."

To Captain Pasley, R.E., who "joined the skirmishers in their advance," and to the civilians who were with the troops, Captain Thomas rendered great praise. He deplored a dangerous, it proved a fatal, wound received by Captain Wise (40th Regiment) while conspicuously leading his company. Thirteen of the military were wounded, and one was killed in the capture of the stockade. Several died of their wounds. Many more would have fallen if the rioters had known why Captain Thomas led

[1] Raffaello wrote: "Captain Thomas noticed my frankness, my anxiety, and grief. After a few more words in explanation, he, giving me a gentle stroke with his sword, told me, 'If you really are an honest digger I do not want you, sir; you may return to your tent.'" Raffaello tells this story in a pamphlet crammed with assertion of his complicity at the stockade.

his men up an ascent guarded with works rather than on the more level ground which was less fortified, though full of holes sunk by miners. Unpractised men usually fire over the heads of troops advancing up an acclivity, and Thomas saved many lives by knowledge of the fact.

The discomfited rioters subsequently averred that there were not 300 men in the stockade when it was attacked; but hundreds escaped by flight. Black and Kennedy were not seen. Vern fled. Lalor, wounded, was carried away and was concealed. Ross, a Canadian, died of his wounds. Many of the slain were Irish. Prussia and Wurtemberg furnished victims. One of them, a lemonade hawker, was a rebel captain. McGill, a young American, fled, and earnest entreaties on his behalf were made by his countrymen. (Sir Charles Hotham consented not to institute a prosecution if McGill would forthwith leave the colony, an alternative which his friends accepted.)

"I have reason to believe (Captain Thomas wrote, 3rd December) that there were not less than thirty killed on the spot, and I know that many have since died of their wounds. Amongst these and the persons in custody several leaders of the insurrection appear, two of whom lie dangerously if not mortally wounded in hotels near the spot. The effect of this blow has been that the police now patrol in small bodies the length and breadth of the Ballarat gold-fields without threats or insult. To such of the wounded as have not been removed I have sent medical assistance, and have caused the unclaimed dead to be taken away and buried in the cemetery." [1]

There was afterwards much dispute whether the numbers in the stockade exceeded the attacking force so largely as every one believed to be the case on the 2nd December. To account for so withering a defeat it seemed good to the rebels and their friends to assert that the military outnumbered the rioters.

[1] To avoid occasion of provocation Captain Thomas gave strict orders that none of the soldiers should go abroad. One of his men earnestly requested permission to leave the camp for a few hours. "I wish to avoid risk of your being attacked by irritated numbers. What do you want to go for?" "Sir, my brother was amongst the rioters. He was killed, and I wish to attend the funeral." "Of course, my poor fellow, you may go. But go in plain clothes, and come back as soon as you can." Such was the material of which the force was composed which Seekamp reviled as unmanly. The man returned duly.

But there was ample proof to refute such a supposition, and as part of it was supplied by an insurgent leader it may be well to record it. After the trial and acquittal of some of the prisoners for high treason, Lalor still in hiding wrote a defence of himself, and an attempted confutation of the narrative of Captain Thomas. The 'Age' newspaper, to magnify its sympathy, printed Lalor's letter in large type.[1] Lalor admitted that on the 1st December he was chosen as leader, and that on that day 1500 armed men were mustered. The same number were in the stockade on the evening of the 2nd. About midnight Lalor retired to bed. "At this time the majority of the men were still in the enclosure." After two false alarms, "on the third and real alarm being given only about 120 men were present in the enclosure. From what cause or by whose orders the others had left I cannot say, but I feel certain they intended to return next day. Before going to bed I had given permission only to one company of seventy men to leave." (Lalor ventured to contradict Captain Thomas's statement that the rioters fired the first volley.) "I have no doubt that our numbers would have amounted to 1500 on Sunday morning had we not been attacked.[2]

It is clear therefore that some who desired to absent themselves knew that Lalor's previous permission was required, and that he gave permission to less than 100 persons. There were therefore supposed to be 1400 armed men in the stockade after midnight. There were two false alarms to excite their watchfulness, between midnight and half-past two o'clock in the morning. After that time Captain Thomas's small band left his camp, and signal shots announced the fact to the rioters. Unready, so far as their skill served, the rioters were in one sense without doubt; but unwarned they were not, and there is no

[1] 'Age,' 8th April, 1855.

[2] Presuming on public sympathy after the acquittal of his accomplices, he expressed regret that "we were unable to inflict on the real authors of the outbreak the punishment they so richly deserved." He denied that many foreigners were connected with the insurrection, but was not credited. Neither he nor any of his friends attempted to explain why the catastrophe they deplored was hurried on by themselves when a Commission of Inquiry containing the popular Fawkner and Westgarth had been appointed to investigate their grievances.

evidence that any considerable number of them had left the stockade between the time when their commander retired and the time of the attack. There were sentries on guard and scouts alert to give warning, yet the manner in which the inmates of the stockade trooped out of it was never accounted for by any evidence except that which described them as flying in random numbers in every direction when Captain Thomas pounced upon their den with a celerity which was as successful as it was, by them, unexpected.

The state of Ballarat may be described in one word. It was stunned. Thousands had gone to bed on Saturday under a reign of terror in which foreigners and disloyal subjects were prime movers in command of thousands of irritated and misled subjects of the Queen. When they rose on Sunday, rebellion's head lay low, and the soldier who smote it down was coolly giving his orders for the peace of the district pending the arrival of his superior officer from Melbourne. A notice signed by Mr. Rede, the Resident Commissioner, notified to the inhabitants that "a large body of evil-disposed persons of various nations" had fired upon Her Majesty's forces, that several rioters had "paid the penalty of their crime, and a large number were in custody." All well-disposed persons were "earnestly requested to return to their ordinary occupations and abstain from assembling in large groups." Protection would "be afforded to them by the authorities." Seekamp, the editor of the 'Times,' was apprehended on the 4th December as he was about to decamp. On the night of the 4th some straggling shots were fired into the camp and were promptly replied to, but no overt resistance was attempted after the capture of the stockade.

On the 5th December, Sir Robert Nickle marched into Ballarat with soldiery and a band of sailors. Captain Thomas's emissaries, no longer liable to interruption by brigands, had borne his despatches safely, and Sir Charles Hotham had transmitted two proclamations dated 4th December, to Sir R. Nickle. One proclaimed martial law in a district containing Ballarat, from noon on the 6th December, and prohibited the importation of arms or food thereto without the Governor's consent; the other in his name authorized all officers to employ Her Majesty's Forces to use martial law in vigorously suppressing

rebellion and punishing rebels; but no sentence of death was to be enforced without the Governor's express consent.

The General was urbane to all with whom he came in contact. In obedience to a general order large quantities of fire-arms were surrendered when martial law was proclaimed. It was thought fit to offer a reward of £500 for Vern, who was the reputed leader. Colonel Edward Macarthur (Deputy Adjutant-General, and eldest son of old John Macarthur of Camden in New South Wales) supported the General[1] by guaranteeing the reward if the Government should scruple at the amount. But the population on the whole seemed to feel relief at the substitution of martial law for the hideous spectre of anarchy which Seekamp and his accomplices had thrust upon Her Majesty's lieges in the previous week. A newspaper correspondent described the people as almost enamoured of martial law. Had Sir Robert Nickle arrived sooner "the bloodshed of last Sunday would have been avoided."

A public meeting was held at Bakery Hill on the 6th. It regretted the riotous and uncalled-for proceedings which had rendered it "necessary to assert the sovereignty of law and order by the sacrifice of so many lives, and the proclamation of martial law." It hoped that Sir R. Nickle would act with as much forbearance as circumstances would permit, and pledged itself to bring its grievances "in a constitutional manner" before the Legislature. The resolutions were to be sent to the Governor. Smith, the Roman Catholic priest, Mr. Humffray, and three others, went to the camp as a deputation. Humffray had just been applauded at the meeting when he claimed to have put his life in jeopardy by advocating moral force only; but, when he arrived at the camp, the authorities, who knew him as one of the earliest and most active agitators, apprehended him.[2]

[1] Sir Robert Nickle wrote that he ventured to offer the reward because "a gentleman in camp" (whom he did not name) guaranteed it. I am not aware that the fact has been previously published. Sir Charles Hotham adopted the amount which the General had sanctioned with regard to the "man known by the name of Vern," but for Black and Lalor he offered £200 only in each case.

[2] He was released on the following day. Seekamp was tried and found guilty of seditious libel, 23rd January, 1855, but strongly recommended to mercy, at first bailed and afterwards (26th March) brought up for judgment,

Magisterial inquiries were made, and thirteen prisoners against whom proof of participation seemed indubitable were committed for trial. Raffaello was one; there were two or three other foreigners, one negro, one half-caste. The remainder were mainly Irish. Raffaello asserted that as they were about to leave Ballarat under escort, Captain Thomas, in tones whose calmness did not weaken their decision, told them that any attempt to speak or to move in crossing the gold-field would cause the offender to be shot. They were conveyed safely to Melbourne.

The Ballarat district being reported by General Nickle (5th December), to be at peace, Sir Charles Hotham, by a proclamation dated 6th December,[1] fixed noon on the 9th December as the period at which martial law should close. As the General arrived at Ballarat late on the 5th December, martial law was nominally in operation only about three days; and no act was done under it. He ineffectually invited persons to be sworn in as special constables on the 9th December. He could enforce submission but could not procure co-operation. On the 10th December he prohibited "any public meeting for the present." Nevertheless the law was obeyed. Captain Pasley wrote on the 4th December, that a "feeling of relief appeared to pervade the whole population at finding themselves suddenly released from the reign of terror which had been established by the insurgents." The miners had "mostly resumed work, and many licenses have been issued to-day." Mr. Rede, the Commissioner, stated (in evidence 10th January), that while martial law was in force "the licenses were taken out in far larger numbers than I had ever known before."[2]

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and sentenced to six months' imprisonment. In his defence he pleaded that Manning wrote the seditious articles, and that he, Seekamp, was blameless, as he dismissed Manning. He was received in the gaol 23rd April, 1855, and was discharged by order of Sir C. Hotham on the 28th June, 1855.

[1] McCombie, in his 'History of Victoria,' and Mr. Blair (who copies McCombie in his 'Cyclopædia of Australasia') state that the withdrawal of martial law was owing to a public meeting in Melbourne on the 6th. This is an error. The proclamation was ordered before the meeting took place. Mr. Blair, who was at the meeting, must have known the truth at the time. Perhaps in extracting passages from McCombie the erroneous paragraph escaped attention.

[2] Victoria, Legislative Council Papers. 1854-5. Gold-fields' Commission of Inquiry, p. 312.

The raising of a rebel standard at Ballarat created dismay in some minds, but aroused the hopes of the seditious in Melbourne. The vicious system of searching for licenses had created enemies of order and of law even among those who had not suffered indignities. The Mayor, Mr. J. T. Smith, had succeeded in eliciting loyal cheers in 1853 when, at the meeting which commended Mr. Latrobe's surrender of the license fee, he asserted that it was not so much the law which was to be deprecated as the occasional insolence of young men entrusted with, but unfit for, its administration. But it was rather his personal popularity than agreement with his appeal in favour of law which was applauded. The community, ever eager, had suffered unwholesome change by the infusion of many reckless elements. The Government in 1851 and 1853 had pampered the appetite for disorder. The 'Argus' had until 1853 lent its weight to the destruction of respect for the constitution of the land. Those who knew him personally acquitted Edward Wilson of evil intent. Those who knew him not were justified in imputing to him much responsibility for the wild and whirling words which others caught from him.

At the close of 1854, a newspaper was established, which from the first might claim rivalry with evil contemporaries elsewhere. Assiduous for its own interests, and confident that it would best promote them by appealing to popular passion, it cast principle to the winds, and might be found in one year denouncing a public man as the vilest of the vile, and in another bespattering the same man with praise. The 'Argus' had been a poor Prospero, prone rather to excite evil spirits than to control them, but the wand which Edward Wilson resigned, was raked from the mud in which he had cast it, and grasped by hands like those of Caliban. While all these evils, with regard to the gold-fields and to the populace, surrounded the Governor, he had to confront the intense and general resolution to maintain in force the Convicts Prevention Act, already described. He assented to it on the 16th November, 1854. The unanimous Council; large meetings which were held in October,[1] and

[1] Mr. Westgarth, who had declared in the Sydney Legislature that those who did not like democracy should leave the colonies to those who did,

which denounced a Bill brought forward by the Governor; had culminated in the re-enactment of the measure condemned by successive Secretaries of State.

Sir Charles Hotham wrote to Downing Street, that he believed that if he had refused to affix his signature "to the Bill, the people would have taken the law into their own hands, and justified it on the ground that the Government had left them no other alternative." In justice to him it must be stated that he argued also that the condition of the colony justified her in excluding criminals in the manner prescribed by the Bill. Boldly as he assented to the Act in spite of instructions, and courageously as he justified his deed, it must not be forgotten that the public mind was seething at the time, and designing men were on the watch to inflame all evil passions. It is probable that if he had not removed the obnoxious subject of the Convicts Prevention Act from the region of doubt, in November, he would have been deprived of the faint-hearted support which he was about to receive in December in the metropolis.

Before tidings of the affray at Ballarat reached Melbourne, he had (2nd December) issued a notice calling upon "all British subjects not only to abstain from identifying themselves" with the evil-disposed persons endeavouring to excite the mining population to lawless and violent courses, but to assist in maintaining order. He did not mention foreigners, but he urged foreign Consuls to aid him. The French Consul, Comte de Chabrillon, on the 3rd December, promulgated a notice warning his countrymen, "*de s'abstenir de toute manifestation qui aurait pour but de meconnaitre l'autorité des representants de la Reine dans la Colonie de Victoria.*" The first duty of a stranger was to respect the authority of the country in which he was a guest. The Consul of France would know how to do justice to all who had complaints to make. The American Consul, on being appealed to in October, assured the Governor that his countrymen had not participated in the riot when the Eureka hotel

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moved the first resolution, denying the Queen's power to let loose convicted criminals in the colony. Another resolution affirmed that compliance with the instructions of the Secretary of State would "seriously endanger the connection" of the colony with England. Mr. Langlands seconded it.

was burnt, and that he had confidence in their "law-loving and law-abiding" character. Sir Charles Hotham received his assurance cordially, and was satisfied that no effort on the Consul's part would be wanting to retain a "high and distinguished character for" his countrymen. On the 4th December, the Consul wrote that he had not issued a proclamation (like that of the French Consul). He had "no hesitation in saying that there are not any Americans engaged in this affair." If the Governor should wish it he would issue a proclamation, but he had every confidence in his countrymen. Sir Charles regretted (4th December) to be compelled to inform the Consul that a most active leader in the insurgents' camp was a young American. He had conversed with a person who saw the young man in the camp.[1] He did not press the Consul to issue a proclamation. He had already crushed the insurgents.

On Monday the population of Melbourne was electrified by a brief narrative in the 'Argus' of the capture of the stockade. Having calculated upon the result, Sir Charles Hotham, without waiting for official despatches, which were more tardy than a newspaper express, took his measures promptly. He issued a notice (4th December), calling upon all the Queen's subjects, and all strangers receiving hospitality under her flag, to assist in preserving order and maintaining the law. "The question now agitated . . . is not whether an enactment can be amended or ought to be repealed, but whether the law is or is not to be administered in the name of Her Majesty. Anarchy and confusion must ensue, unless those who cling to the institutions and the soil of their adopted country step prominently forward." He relied upon the loyalty and sound feeling of the colonists, and called upon "all faithful subjects, and all strangers who have had equal rights extended to them," to enrol themselves and be prepared to assemble at places appointed by civic authorities in Melbourne and Geelong, and by magistrates elsewhere. Such a notice would perhaps have elicited little response under Mr. Latrobe; but the spectacle of a firm man, in whose demeanour the shock of the Ballarat catastrophe made no change, commanded respect and extorted sympathy. Fifteen hundred special constables were sworn in on the first day in

[1] Legislative Council Papers, vol. ii. No. 67. 1854-5.

Melbourne.[1] The Governor did not rely entirely on their services. Before receiving official accounts of the capture of the Eureka stockade, he applied to Sir W. Denison for troops to enable him to preserve order in Melbourne. On the 4th December the Mayor (Mr. J. T. Smith), in compliance with a requisition signed by Mr. Henry Miller, Mr. W. Nicholson, Mr. J. P. Fawkner, and other members of the Legislative Council, called a meeting to take "measures for the better protection of the city and upholding the cause of law and order."

Mr. Foster knew himself to be the object of hatred and suspicion. He was not chargeable with all the misgovernment and vacillation of the past, but for a time he had been the chief Executive officer under Mr. Latrobe, and was identified with the Government. He was its nominal leader in the legislative body. He was believed to be an accomplice in a waste of public money, and a reckless, though not corrupt, profusion of appointments to public office. On the 4th December he tendered to Sir Charles Hotham his resignation. The allegations against him were untrue, but they militated against his efficiency as first minister. If his Excellency should think Foster's retention of office an impediment to the Government, Foster would resign, from "a sense of duty that urges me to sacrifice my own interest in order to render more easy the government of the country." He pointed out that under the Constitution Bill (sent to England for Her Majesty's consideration) his office was pensionable,—that he would be entitled to some compensation for abandoning it, and that he would "accept any proposal on the subject emanating from the Executive Council."

Sir Charles Hotham refrained from putting any pressure upon Mr. Foster. Some friends urged, others dissuaded, him. Enemies declared afterwards that fear caused him to resign; but he was at least entitled to the credit awarded by Sir Charles Hotham, who, when he formally accepted it, wrote that the sacrifice was made for the public good.[2] There were wild

[1] Despatch. Sir C. Hotham. Parliamentary Papers, vol. xxxviii. 1855.

[2] Foster's letter was dated 4th December, that of Sir C. Hotham on the 11th. But Foster himself announced in the Legislative Council, on the 6th December, that he had resigned. The Governor wrote that under ordinary circumstances he would not allow a prejudice against an officer to influence

rumours abroad, but they did not specially endanger the Colonial Secretary. He himself told the Governor that it was a question whether a "digger delegate" or Sir C. Hotham would control public affairs, after a few hours. But Sir Charles Hotham smiled contemptuously, and no public demonstrations had been made against Foster in Melbourne, nor had any popular gatherings there displayed sympathy with the Ballarat rioters when he tendered his resignation. Doubtless strange characters were pouring into the city on the 4th and on the 5th. There were always "successful diggers" spending in riotous debauchery in Melbourne the fruits of their labours. But now their name was legion.

It was said that the ring of fire with which the gold-fields' delegate had in 1853 threatened to encircle Melbourne was now to encompass it. There were demagogues who, careless of other consequences so long as they could cram themselves with notoriety, were ready to take up the cause which the 'Argus,' saddened by experience, had found leading to anarchy. There was a solicitor, Mr. J. M. Grant, whose father had been induced by Dr. Lang to immigrate to Sydney, and who had himself been a pupil of Lang. When grown to man's estate he had actively supported Lang in elections at Sydney. He had swallowed Lang's political notions, and had extended his studies by an expedition to the Californian gold-fields. Dissatisfied in Sydney he migrated to Victoria. There happened to be in Melbourne another person, the Rev. David Blair, a young Presbyterian minister, who by Dr. Lang's agency had been inducted to New South Wales, but saw a more tempting field

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his decision. But the colony was critically situated—"masses of men are herded together, easily excited, easily influenced by designing leaders . . . great dissatisfaction existed prior to my arrival . . . it has lately burst forth with renewed and I may add dangerous violence . . . I cannot disguise from myself that were I to decline accepting your resignation, the Queen's colony would be placed in jeopardy." He recognized the "high-feeling" which impelled Foster to resign, bore testimony to his "indefatigable perseverance" in his "laborious office," and added a "hope that the Legislative Council on my recommendation may see fit to award you compensation for the pecuniary sacrifice you are making in the cause of the colony." He told him that the letter must be held as strictly confidential. He did not desire to promulgate a statement that the colony was in jeopardy.

for his literary talents in the younger colony. Such persons could not have been prompted by ill-usage to hostility to law. They may have seen in the turmoil of the times an invitation to notoriety. There were hundreds, indeed thousands, with a like excuse, and there were many who had more. They are mentioned merely as types of a numerous class.

No sooner was the meeting called by the Mayor for the 5th December, to take measures to "uphold the cause of law and order," than Mr. Grant leagued himself with Dr. Owens (one of the disturbers at Sandhurst delegated in 1854, as formerly in 1853, to Melbourne). They announced by advertisement that the citizens ought to meet to protect constitutional liberty; that "the constitutional agitation at Ballarat has assumed its present form owing to military coercion;" and that a Committee of seven persons ought to be appointed to mediate between the Government and the diggers, to restore peace and withdraw the soldiery. They and their friends mustered in force at the Mayor's meeting, which was adjourned to a space before the Police Office in Swanston Street because the Hall (Mechanics' Institute) in which it had been convened was not spacious enough for the numbers drawn together, partly for order and partly for disorder.

Mr. Fawkner moved that the meeting deeply deplored that any sense of wrong had induced a "portion of our fellow-citizens at Ballarat to resort to the use of arms in resistance of lawful authority." He was heard, but there were ominous symptoms that a majority did not approve of lawful authority. The Mayor, on the plea that the object of the meeting was that for which it was convened, adroitly put the question, and as its supporters were numerous, and its opponents not organized, it was carried. Resolutions that there could be no security without maintenance of law, and that it was the duty of all to aid in maintaining order, were moved and supported by Messrs. W. Hull (an old and esteemed colonist); Captain G. W. Cole (of like reputation); Mr. J. A. Marsden, a popular speaker; and Mr. Henry Miller.

The Mayor, amidst much confusion, declared them severally carried. Then a man almost unknown to the citizens strove to move the adoption of a petition, declaring that the men of Ballarat had been goaded by "long misrule and odious administration," and that a Commission, of which the diggers should

nominate a part, ought to inquire into their grievances. Another man shouted that Foster, the Colonial Secretary, must be got rid of, and the applause was so loud that the meeting seemed for once unanimous. The Mayor resolutely kept to the announced business of the day, and got rid of the intruders.

Mr. O'Shanassy moved a resolution imploring all classes to use their influence to repress disorder, and promote peace by "appealing to reason, the noblest characteristic of a civilized people." He was heard and applauded, but the hearts of many were far from being touched by an appeal to reason. Mr. Hodgson, an old colonist, supported him, and the Mayor, amidst much turmoil, declared the resolution carried.

The disorderly then crowded about the platform, apparently intent on mischief. The Mayor declared the meeting at an end, and vacated the chair. The mob surged hoarsely round, and put a loquacious doctor, Embling, in the chair. The man whom the Mayor had controlled during the earlier part of the meeting reiterated his demand for the dismissal of Mr. Foster. Others, including an effective speaker from Ballarat (John Cathie), stirred the excited crowd to fury. In uproar of applause the resolution for "immediate dismissal" of Foster was carried. With groans for him, three cheers for their inept chairman, and continuous cheers "for the diggers," the crowd at length dispersed; leaving the industrious burgesses to wonder whether it was indeed true that by pouring in exasperated numbers the miners could overwhelm the expression of the opinions of sober citizens. It was manifest that among the citizens themselves there was sympathy with the wrongs, real and alleged, of the miners.

On the following day the demonstration against military force was to be held under the auspices of Messrs. Grant and Owens. The former ostentatiously declared that he would defend gratis the prisoners captured at the Eureka stockade. The scene was at the corner of Swanston Street and Flinders' Lane. By some plotters of the meeting it was hoped to overawe the Governor. By the bulk of it only popular excitement was felt. On that morning of the 6th December several conspirators concocted a revolutionary Constitution, which was to follow the great meeting of the day. It was printed and secretly circulated.

Amongst his sources of information was one which furnished to the Governor a copy of "The New Constitution of 6th December, 1854." The blatant Owens was secretly spoken of as the man who was provisionally to wield power on the deposition of the Governor. Taxes and imposts of every kind bearing on "labour or provisions, luxuries, or any article whatsoever," were to be abolished. Revenue was to be drawn from real and chattel property, and from absentees who were to pay 75 per cent. of their incomes. All men between the ages of sixteen and sixty were to be enrolled and drilled. There were to be two legislative bodies, but all property qualification of electors or elected was to be abolished. "A convention based on these principles to be held as soon as possible." Powder-mills, fortifications, and a Mint were to be created. The Government was "to be prohibited from borrowing any money at interest." A general amnesty was to be extended to the officers of the superseded Government, and grants of land were to be given to the soldiers and Her Majesty's officers. A few of the latter would be retained as military instructors. No charge was to be made for removing stone, timber, earth, gold, silver, "or in short any other mineral," from public land. All taxes "upon the imports and exports of any kind of goods whatsoever to be totally and for ever abolished." "A provisional directory of twelve to be appointed this day, to carry out those general principles in the most peaceful manner." With characteristic inconsistency the proposed proclamation of the "residents of Victoria" ended with "God save our Queen Victoria." [1]

The obstacle to the proclamation was the character of the Governor. To come into conflict with his determination might bode ill for a few of the conspirators, who were men of the pen, while he was evidently a man of war. The 'Argus' was quivering and dumb. Men connected with the 'Age' newspaper had assisted to frame the new Constitution.

Public opinion of the ordinary citizens had been tumultuously overborne by turbulent men of the new order, whom gold had attracted to the colony. But, doubtful whether the strong man at the head of affairs would submit, the conspirators

[1] A copy of the document sent by Sir C. Hotham is to be found in the House of Commons Papers, vol. xxxviii. p. 89. 1855.

determined not to thrust their scheme forward on the 6th December. They would content themselves with letting popular indignation find vent. Afterwards their time might come. The military were absent at Ballarat. Mischief, once afoot, might take its own course. The plotters could avail themselves of any direction it might take. Sir Charles Hotham, aware of the intrigues of some of those around him, consulted his Council duly, and with courtesy, but did not always take their advice.

He had prepared to visit Ballarat as soon as the affray there was known, but in deference to them and to representations that the safety of Melbourne would be endangered by his absence, he remained. His undisturbed bearing gave assurance to others.[1] He made the necessary preparation to protect the city in case the disorderly should, at the meeting on the 6th, become predominant. It was arranged that if possible some respectable citizen should be put in the chair. Mr. Fawkner went to speak. Mr. Langlands, and Mr. Fulton, well-known as popular employers of labour, attended, and Dr. Embling moved that Mr. Langlands should take the chair.

Guardians of order were within call. Sailors and marines from H. M. SS. 'Electra' and 'Fantome' protected the powder magazine and the Treasury. Three hundred policemen and a hundred gaol-warders were out of view, but near the place of meeting. A hundred mounted gentlemen volunteers were assembled, but unseen; and special constables awaited the summons of the mayor. Sir Charles Hotham passed calmly by the meeting-place as if no treason were in the wind. Dr. Lang's *protégé*, Mr. David Blair, vigorously addressed the meeting in favour of a resolution, framed in accordance with the notice from Grant and Owens, that "the constitutional agitation at Ballarat assumed its form" in consequence of military coercion. The speaker "abhorred bloodshed," but "there was nothing left for them but rebellion. What was there left for him but to arm himself?" The chairman, as a loyal man, interposed to

[1] Holyoake's visit to Sandhurst excited apprehension. Sir C. Hotham made arrangements for Captain Thomas to appear there when needed. One of Sir C. Hotham's colloquists said: "But Ballarat will be in danger if Captain Thomas takes troops away from it." "You need apprehend no danger there," he replied, "for some time. I know the effect of a collision between disciplined troops and a mob. Ballarat will be quiet enough."

condemn the word "rebellion," and allayed the ardour of the speaker, though not without giving umbrage to the greedy auditory. Mr. Fawkner seconded the motion, but declared that he did not agree with all Mr. Blair's words. Let them petition the Legislature. Their wants would be attended to. He left the meeting to take his place in the Council. Dr. Owens harangued the crowd, and took credit for the active part which, with Mr. Grant, he had taken in "organizing" it. Mr. Fulton moved, that "while disapproving physical resistance," the measures of the Government ought not to be supported until a guarantee could be obtained that there should not be "military despotism." Mr. Grant moved that Messrs. J. O'Shanassy, W. Westgarth, J. P. Fawkner, J. F. Strachan, Henry Cooke (one of the proprietors of the 'Age' newspaper), J. Fulton, and Owens, be appointed as a Commission to mediate between the Government and the diggers. With three cheers for liberty, three "for the diggers," three for Dr. Owens, three for Sir Charles Hotham,[1] and three groans for the troopers, the assembly dispersed. The New Constitution and other seditious placards were circulated amongst the crowd.

The office of the 'Argus' newspaper was said to have been an object for attack, and the 'Argus' made little comment upon the proceedings of the day. Nothing was said in it about the armed forces ready to put down riot.[2] Neither did the 'Age' think it prudent to dwell upon those preparations which had had the effect of quenching the ardour of its revolutionary accomplices. A few sentences culled from its columns at this period will show in what way it courted the breeze which the 'Argus' had begun to fear.

When first established (17th October, 1854), it had professed

[1] The 'Argus' reported the cheers named in the text. The 'Age' omitted the cheers for Dr. Owens and Sir Charles Hotham, and inserted "groans for Foster." I cannot decide which report is correct unless the fact that in those days the 'Age' sometimes reported with malice prepense be held sufficient to invalidate its claim to be trusted in this instance.

[2] The 'Age' reported that as the crowd dispersed, two troopers were followed into a lane with yells. The 'Argus,' on the 8th December, having somewhat recovered its self-possession, said, "We have no hesitation in predicting that if these troopers had actually been attacked, a scene might have been witnessed in the metropolis before which even the terrible carnage at Ballarat would have been cast into the shade."

moderation. It had "never learned that the service of the people requires us to abandon fair and temperate arguments for the coarser weapons of personal invective." On the 21st November it had advanced so far as to write, with reference to the burning of the rascal Bentley's premises, and his narrow escape from the mob: "Lynch law, however objectionable in form, is generally unexceptionable in principle. It is prompted by the primal instincts of humanity, and they are never wholly wrong." After the assault on the troops as they marched to Ballarat, when the drummer-boy was wounded in the dark, a leading article (1st December) declared: "'Tis done! the exasperated people have at last broken through the restraint of judgment. . . . Rest and repose will be no more amongst us until the last vestige of the old and worn-out despotism has been swept away. . . . Our sympathies are with the people, but we would deplore and mourn the spilling of one drop of blood."

On the 5th December, startled at the narrative of the capture of the Eureka stockade, it wrote: "The reign of Queen Victoria has been superseded by a reign of terror." It counselled the diggers "to stop in their career of revolt," not as foiled, but as brave men who had "discovered their error." It demanded from the Government that brute force should cease. It called on the colonists not to support the Government at the meeting called for the 5th, on behalf of law and order in Melbourne. On the 6th it boasted that the meeting "was a failure." It required (as Mr. Grant required) that to the Commission of Inquiry at the gold-fields four members should be added by popular election to Messrs. O'Shanassy, Fawkner, and Westgarth. "It is Victoria's hour of trial." The meeting on the 6th it declared "a noble one." As the new Constitution could not safely be promulgated by its concocters, the 'Age' professed that "justice, not anarchy," was the object of the meeting.

On the 9th it asserted that "the statement about foreigners being at the bottom of the late disturbances was a gross and designed fabrication: . . . the movement . . . was under the direction of British subjects, and its ostensible and *bonâ fide* objects were simply to secure British justice and laws. . . . The foreigners in this colony are as orderly as the best citizen could desire."

On the 16th December, confident that they who at Ballarat and Melbourne had pronounced against law and order, would be found accordant in most things with itself, it wrote: "We claim manhood suffrage . . ." If the people are "denied their rights, and driven to persist in battling for their acquirement, it may be within the bounds of possibility that a short, direct, and clear road will be discovered which may place station and power at their command. Let Sir Charles Hotham be wise in time." The observant could detect in this language the echo of the words of Dr. Lang; and amongst the writers of the day were pupils of the old disturber, who in 1851 contemplated the early establishment, probably "by violence," of "a system of government in which Great Britain will have nothing to say." Moreover, Lang himself was in Melbourne at this period. His own practice with regard to the funds of others was ill-calculated to inspire his dependents or admirers with scrupulous respect for the law of *meum* and *tuum*. Unfortunately his son had recently been tried at Melbourne for embezzlement, and convicted. The sympathy which all men felt for an afflicted father was checked by the virulent abuse which he heaped upon the Chief Justice, who had presided at the trial. Sir William A' Beckett was one of the most amiable and kindliest of men, but Lang compared him to Judge Jeffreys, and belaboured him with unsavoury epithets, because in consequence of bodily infirmity A' Beckett could not walk without assistance. Lang was tried for malicious libel in February 1855; defended himself with his customary ability, and was acquitted by a jury, which would have been inhuman if devoid of some sympathy with a father placed in Lang's position.[1] Moreover, there was at that time, seething in the minds of jurymen, an antipathy to restraint, and a contempt for authority such as the 'Argus' previously, and the 'Age' in 1855, was wont to encourage.

On the 6th December Mr. Foster announced to the House his resignation (tendered on the 4th), and Mr. Childers assured the Council that the resignation arose from the personal feeling of Mr. Foster, and not in any way from his Excellency.[2] On the

[1] In June 1855 Dr. Lang was, however, convicted in Sydney for criminally libelling a functionary of the Bank, which Lang's son and Drake had served. The Bank had establishments in both colonies.

[2] On the 20th February, 1855, Sir C. Hotham, in accordance wih this

same day, Mr. Henry Miller moved a resolution expressing sympathy with the Governor, and pledging the House "by every means in its power to aid him in restoring and maintaining law and order." Mr. Foster seconded him, and threw the blame of stirring rebellion at Ballarat upon foreigners. Mr. Wright, the Gold Commissioner, though he had consented to the abandonment of law in 1853, thought "the great majority of the diggers were well-disposed and delighted at the prospect of the restoration of order." Mr. Haines considered there was "ample proof that the diggers were not at the bottom of the movement," and that the time selected for the outbreak (when the Government had appointed a Commission of inquiry) was "exceedingly bad." One Irish member (Myles from Geelong) warmly dissented. The Speaker with many members presented the Address on the 7th December, and the Governor, supported by numerous functionaries, expressed his satisfaction "that at a moment of unusual difficulty the Legislative Council of Victoria have assembled themselves around the Governor, and enabled him to proclaim to the world that with one voice, and one mind, and one heart, we are resolved to maintain the law." His reply was spoken, but a short-hand writer took down his words.[1] He recalled the efforts he had made to avert mischief; the dismissals of Dewes and another corrupt official, a sergeant of police; and the appointment of a Commission; his despatches to Captain Thomas were read, and an extract from a loyal petition signed by fifteen hundred miners

promise, "having consulted the Executive Council as to the amount, recommended a sum equivalent to two years' salary as compensation." There was demur in the Legislative Council. Foster asked the Governor to allow the letter of the latter to be produced in aid of his claims. Sir Charles declined to permit the production of any portion of a letter which was declared (when written) to be "confidential, and not for the public eye." After considerable debate Foster's claim was shelved in the House in the end of March, 1855. He revived it on more than one occasion in later years, but without success. In its prosecution, several advocates unjustly aspersed Sir Charles Hotham as having broken faith with Mr. Foster. On the last inquiry tardy justice was done to the Governor's memory by the production of evidence amply confuting many injurious imputations. (*Vide* Victoria Legislative Assembly Papers. 1867.)

[1] Despatch. Sir C. Hotham to Secretary of State. Parliamentary Papers, vol. xxxviii. 1855.

at Forest Creek, who prided themselves on the fact that amongst them there had never been disorder. He anxiously hoped that there might not again be occasion to revert to martial law:

"but, gentlemen, the moment there is an outbreak, and that caused not by Englishmen but by foreigners—men who are not suffered to remain in their own countries in consequence of the violence of their characters, and the deeds they have done—I for one say that whenever that happens, the Englishmen of Victoria must rally round the Government, and must, to a man, sink their private differences, and forget the causes of difference which to Englishmen are inherent, and which to a certain extent are the blessings of our Constitution, and must rally round the authorities, liking or disliking them, and put that outbreak down. As long as I am at the head of the Government I will endeavour to prevent these foreigners agitating. . . . The resolution passed yesterday . . . the able tone of the debate . . . will show that the colonists will not suffer anarchy and confusion to reign here; that we will maintain law and order; and be the men that endeavour to create disturbance who they may, and from whatever countries they may come, down they shall be put. But at the same time we will to the utmost of our power endeavour to repress any grievances that may exist, and by appointing a Commission as I have done, I show that I fully believe there is some cause of grievance. . . . I most cordially thank you for your expression of feeling, and I hope from the bottom of my heart that whatever circumstances may arise I may not be found wanting."

A few days afterwards the Mayor of Melbourne presented an address of loyalty from the Corporation, who assured the Governor of their support in maintaining the supremacy of law. He, in reply, commended the precautionary measures already taken, which it was needful to follow up under circumstances "which render probable the recurrence of not dissimilar scenes." Other addresses were received, and the determination of the Governor restored confidence amongst the loyal.

But the plotters of disorder were ill-pleased. The meeting at which they at first had hoped to propound and carry with the breath of thousands their new Constitution, had dictated the names of Commissioners for Inquiry at the gold-fields. The Governor did not obey. On the 7th December he remodelled the Commission he had appointed in November, of which Mr. Haines was to have been chairman. Change was required

because Haines became Colonial Secretary in room of Foster. But Westgarth (chairman); Fawkner; Wright (Chief Commissioner of Gold-fields); appeared in the new Commission as in the old. To them were added O'Shanassy and Hodgson, both members for the city of Melbourne, and both prominent at the public meeting on the 5th in support of law and order. Dr. Owens, Mr. Fulton, and Cooke (the 'Age' proprietor), whom the meeting hostile to order had selected, did not appear in the new Commission.

When the resolutions of the dictatorial meeting were communicated to the Governor, he answered that a Commission had already been appointed, and he trusted that the miners would "avail themselves of the opportunity to bring forward their wishes and views before the gentlemen who compose it." The discontented Grant and Owens jointly expressed in the newspapers their regret that the Governor had "failed to recognize the legitimate views of the citizens;" that the Commission as constituted was of "doubtful impartiality," and was justly to be "regarded with suspicion." To a petition signed by sympathizers with Grant and Owens the Governor replied as he had replied to their principals. But neither the Californian experience of Grant, nor the admiration of the 'Age' for lynch law,[1] induced the conspirators of the 6th December to prosecute their plans in face of the man who had shown that he would do his duty at whatever risk, and knew how to do it. He had also procured reinforcements from Tasmania.

Alluding (4th December) to the Ballarat outbreak as more than "an ordinary riot," he wrote to Sir W. Denison:

"The insurgents are principally foreigners, well drilled, and said to be well commanded; they have been, as you will see, completely routed, and may, I hope, now be discouraged from assembling again in force; but, with the numerous gold-fields, and the uncertain population which inhabits them, it is impossible to say from hour to hour whether disaffection may not show itself in some other quarter."

The despatch was unlike the former appeals of Mr. Latrobe, which had been compared to "the groans of the Britons." Sir W. Denison had double pleasure in affording aid to a man

[1] It must not be supposed that the 'Age' habitually advocated lawlessness. On the contrary, it continually "quoted Scripture for its purpose."

capable of using it. He received the letter on the 7th. On the 8th, 300 of the 99th Regiment were embarked. On the 10th they were in Melbourne, and the conspirators of the 6th December knew that their designs were hopelessly defeated. Writing on the 20th to the Secretary of State, Sir C. Hotham commented on the loyalty evinced by the Legislature, and by the addresses he had received, and considered that "any hopes which the evil-disposed may have had" were "shattered to the winds." To all who had aided him he tendered hearty thanks, and again recorded the debt due to Captain Thomas, who had "twice rendered this colony essential service."

The Governor's detractors invariably denounced him as impatient of counsel. On this occasion a gentleman, who feared that in the hour of success he might incline to arbitrary rule, warned him that, as he had in public speeches advocated government springing from the people, his despatches, if they should appear contradictory to that advocacy, might entail infinite trouble upon himself and on the Government. They would be laid before Parliament, and in a few months would find their way to the colony. So to write as to maintain consistency would redound not only to his credit, but to the peace of the country. This he might do without abating his determination to enforce existing law. He listened with some surprise to the allusions to his speeches, and controlled himself till the end. After a few moments, he said: "I am extremely obliged to you. I shall take your advice." His despatch of the 20th December continued thus: "But that which has occurred will in no way militate against the promotion of that policy which I believe necessary for Victoria; under a liberal system of government only can she thrive, and it will be my study and aim to foster and aid it." The agitators who had ulterior objects in view while stirring the masses, were "indifferent as to the precise form of government to be obtained, provided the road to it lay through an overthrow of property and general havoc. Foreigners are to be found amongst the most active; and, if they abuse the hospitality and protection they obtain here, have no right to expect clemency if convicted." The Gold-fields Commission of Inquiry would report ere long. He hoped to abide by its recommendations:

"but so long as a law, however obnoxious and unpopular it may be, remains in force, obedience must be rendered, or government is at an end. Concessions made to demonstrations of physical force bring their speedy retribution; the laws which regulate the gold-fields are the same as I found them, and until they are legitimately repealed or modified, it is my duty to maintain them."[1]

On the 19th December Sir C. Hotham gave the Royal Assent to a Martial Law Indemnity Act, "in order to conform with the practice observed in similar cases" . . . "although no act had been performed under the authority of the proclamation." The Act was approved in England.

Sir George Grey (then Secretary of State) sent (April 1855) prompt recognition of the services rendered by the Governor and the forces under his command. Lord John Russell, his successor, conveyed in June by "Her Majesty's commands" . . . her high sense of the "prompt and energetic and at the same time prudent manner in which you acted under very trying circumstances, and in which you so speedily quelled this alarming outbreak." Sir Robert Nickle was to receive honorary distinction; and Lord John Russell added: "I have also in deference to the express commands of Her Majesty brought the gallant services of Major Thomas[2] on this occasion under the notice of the Commander-in-Chief."

[1] The difficulties of the Governor's position were not confined to the gold-fields. The Criminals Influx Prevention Act had been disallowed again in England. A new Bill was passed November 1854. In this matter the colonists and their representatives were of one mind, and it required delicate handling to avoid conflict with them or with Downing Street. Like Mr. Latrobe, Sir C. Hotham urged that the Act should be allowed, and his views prevailed. The finances were in disorder. Not receiving loyal assistance from some counsellors, Sir C. Hotham, wisely or unwisely, conferred with representative members. Assured by him that any retrenchment agreed to in the House would as far as possible be enforced, Mr. O'Shanassy at this time (14th December, 1854), carried, by 21 votes against 14, a proposition to reduce the expenditure (proposed by Mr. Foster and his friends) by more than a million sterling, and condemning the misappropriation by them of £869,000 of the land fund. Sir Charles Hotham at an early date desired to have another Executive Councillor in room of the intriguing Collector of Customs, Mr. Childers. The latter in resisting the desire animadverted on the Governor for allowing the representatives to dictate the principal points of the Estimates.

[2] Captain Thomas had obtained his majority in ordinary course. He was afterwards Colonel of the 67th, and rose from a sick-bed to accompany his

It was a pity that Lord John Russell did not at the same time hearken to the requests of Sir Charles Hotham for the remodelling of the Executive Council, so that he might be surrounded by those in whom he could confide. But Mr. Childers had many friends, and knew how to bring their influence to bear on a man who (according to the Rev. Sydney Smith) belonged to a "race which must be trepanned before they can be convinced."

In December 1854 the Governor somewhat strengthened his position by appointing Mr. (afterwards Sir) Charles Sladen Acting Treasurer; the Treasurer, Captain Lonsdale, being absent on leave.

Thwarted in the field, the lovers of misrule devoted their energies to the arena of law. When the men of Ballarat perceived that the crowd in Melbourne sympathized with them rather than with the Government, steps were taken by means of a coroner's inquest to prosecute the captors of the stockade. One Henry Powell died of wounds received. He had thought that he received a fatal sword-wound from Mr. Akehurst, a clerk in the police office at Ballarat. On Sunday, 10th December, a coroner's jury (in defiance of evidence that he had carried no weapon which could have inflicted the wound) found a verdict of wilful murder against Akehurst and others unknown, accompanying their finding with an expression of horror at the "brutal conduct of the mounted police in firing at and cutting down unarmed and innocent persons of both sexes at a distance from the scene of disturbance on December 3rd, 1854."

Mr. Akehurst was tried in Melbourne on the 18th January. In default of evidence he was instantly acquitted. But it was known that able barristers were proffering their services for the defence of the prisoners captured at the stockade. By law, "All treasons, felonies, misdemeanours, and offences cognizable

regiment to the field in China, in 1862. It was almost certain death to expose himself in his weak state to the air, but the doctor extorted a promise that he would be carried in a sedan-chair when unable to ride or to walk, and thought that under such circumstances the risk was somewhat less than from fretting at confinement in bed. Such was the answer of the medical man to remonstrance from the author, who had seen the cadaverous patient on what was expected to be his death-bed. The doctor was right. Vigour of mind appeared to impart vigour to the body, and the gallant soldier recovered.

in the Supreme Court," were "prosecuted by information in the name of Her Majesty's Attorney or Solicitor-General, or of such other person as" the Governor might appoint. Sir Charles Hotham was nervously solicitous to follow implicitly in all legal matters the advice of the Crown lawyers.[1] It fell to the Attorney-General to elect in what manner the indictments should be framed, and it is hardly fair to pronounce after the event that he was unwise in electing to try for high treason men of whom some were ostensibly guilty. Nevertheless, the meetings on the 5th and 6th December, in Melbourne, indicated that amongst those from whom a common jury might be drawn, there was undissembled sympathy with the rioters, and not lurking but loud-mouthed hatred to the Government.

At this hour of trial the absence of a grand jury was a fatal flaw in the administration of the law. The executive officer, mainly identified with the policy of the Government under Mr. Latrobe, fulfilled the functions of a grand jury, and was prosecutor of offenders who pleaded that misgovernment caused them to offend. Failure in the prosecutions would imply censure of the Government. Some of the most glorious pages in English history are those in which a grand jury has stood between tyranny and its prey, and vindicated the wisdom of the inquisition by which twelve good and loyal men must find a true bill before any Englishman can be presented for trial as a criminal. If, said the great English commentator, trial by jury has so great an advantage over others in regulating property, how much must that advantage be heightened "when it is applied to criminal cases!"

But this "glory of English law" was absent from Victoria. Had a grand jury rejected a Bill of indictment for high treason it would have been competent for the Attorney-General to frame a charge for a minor offence, and perhaps even a common jury would have shrunk from justifying the criminals when presented before them. Had a grand jury found a true bill in the first

[1] In evidence, in 1867, Mr. Foster said: "I do not consider that he intended any personal slight to myself by not consulting me; he seldom consulted any of his officers at all. (Question put—'In matters of Executive?') Yes, in fact, except asking the Attorney-General upon law-points, he seldom or never asked advice—he always did that." (Victoria, Parliamentary Papers, 1867. Mr. Fitzgerald's case.)

instance, and had a common jury acquitted, the disgrace to the law and to the country would have been less than that which occurred. The grand jury do not pronounce a man guilty. Their rejection of a bill implies only that it does not contain sufficient cause for presentment of the prisoner for trial. They hear no defence on his part. His subsequent acquittal is not a verdict which can lower them in the eyes of their countrymen. When they find a true Bill they only declare that there is sufficient *ex parte* evidence on which the accused may fairly be tried before a jury of his countrymen.

The Commission of Inquiry visited the gold-fields without delay. They opened proceedings at Ballarat on the 18th December. They took evidence there until the 26th, and at Creswick's Creek on the 27th. On the 29th December they were at Castlemaine, where, as well as at Sandhurst, they pursued their labours. On the 8th January they were in Melbourne. They informed the Governor that the voluminous evidence would preclude their reporting for some weeks, but they were unanimous in recommending the abolition of the license fee. On the 10th January they adopted a letter, requesting the Governor to grant a general amnesty (including within its scope the prisoners awaiting trial), and to stay all proceedings "relative to the lamentable occurrence" at Ballarat.

On the 11th, Sir C. Hotham replied that the subject had already occupied the serious attention of himself and of the Executive Council, and that with the concurrence of the Council he declined to accede to their suggestion.

Their final report was made on the 27th March. Mr. Wright signed it with a protest against its abstinence from a verdict of guilty or not guilty with regard to officers on the gold-fields, who had been unjustly aspersed. The other Commissioners, in response to Mr. Wright's appeal (made to them on 21st March), bore testimony in favour of many officers, especially of Mr. Panton's[1] discretion "during certain occasions of emergency" at Sandhurst, and disclaimed the duty of inquiring concerning the

[1] Mr. Panton was a nephew of the Major Anderson who signalized himself by his successful command at Norfolk Island, and was eulogized by Sir George Gipps. Anderson himself was in 1855 in Victoria; a retired Colonel, and a nominee member of the Legislative Council.

character of officers. "They have repeatedly stated that there prevailed a wrong system which tended to the irritation of both authorities and people, and that this system has been the chief object of their attention and animadversion."

In Melbourne there was a notable change of opinion as to levying a royalty on the gold by means of an export duty. The President of the Chamber of Commerce (A. R. Cruikshank) declared (10th January) that that body had decided by a majority in its favour. On the same day bank managers advocated it, and Mr. Henry Miller, a representative member who had contributed to defeat the proposal in former times, told the Commission, "I am now in favour of an export duty on gold."

The Commission recommended "a moderate export duty" of 2*s.* 6*d.* an ounce, or, "to use a more suitable name, an assessment upon the gold produce;" a fee of £1 a year for a miner's right, "mainly for recognizing the public right with regard to the gold of the soil;" and that the miner's right should qualify for the franchise.[1] They gave more wholesome advice when they urged that land should be sold largely near the gold-fields in order to settle the people on the soil. They were shocked to find that only 44,000 acres had been sold in the vicinity of gold-fields; more so because Captain Clarke, the Surveyor-General, had assured them "that in surveying and bringing forward for sale the colonial lands he had not found any practical difficulties arising out of the squatting question."[2] With strange ineptitude

[1] The vicious nature of this proposal will be seen by comparing it with the general franchise at the time. Freeholders, of at least six months' standing, of a clear unencumbered value of £100; householders occupying dwellings of the clear annual value of £10, and having resided therein for six months; pastoral licensees or lessees of the value of £10 per annum (the lease having not less than three years to run), were entitled to be put on the electoral roll. Instead of seeking by all means to attach population to the soil, and thus widening the electoral basis in a homogeneous manner, the Commission proffered (for the insignificant sum of £1, which enabled the miner to remove unlimited quantities of gold) to every straggling digger a vote which gave him equal voice with the most industrious settlers in the disposition of affairs.

[2] The Governor called upon Captain Clarke for a report on the subject. He reiterated his statement. He complained that the Commission had not noticed the fact that half a million of acres had been sold in 1854, "large proportions of which were little removed if not contiguous to the gold-fields." He was in such haste to justify himself that he wrote his own defence without calling

they averred that the facilities for settlement in South Australia "did not arise from any different land regulations." (The reader will remember how Earl Grey's land orders were unanimously condemned there, that local proposals were submitted for the Royal pleasure, that they were approved, and that under them no pastoral lease could bar the resumption of land for sale.) They declared that if hundreds of thousands of acres sold yearly would not suffice to break down the monopoly of land "they must be brought forward by millions." They desired to confer electoral privileges upon the mining population, whose intelligence they lauded highly. By the Draft Constitution passed in 1853, and transmitted to England for approval, the miner's right was made to confer a vote for the proposed Lower House. Pending the Royal pleasure, the Commission suggested that the Governor might select as nominee members those whom the miners might choose for the purpose. They thus not only intensified existing evils, but led the way to further constitutional changes. When the mere possession of a miner's

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in the aid of a friendly reviser. A few sentences will show his style. "Thus far, then, I think I have shown that in the immediate vicinity of the gold-fields the charge of inefficiency of establishments on the *statu quo* of the Crown lands has proved no obstacle under the existing Imperial laws for the sale of land to its acquirement by the miners. . . . Nor are the Commissioners hardly justified, when the facts are considered, whilst expressing their gloomy views, in wholly ignoring the policy of the Government in their exertions for opening up the country for settlement." Captain Clarke had taken umbrage at this period. After Foster's resignation a paragraph in the 'Age' newspaper suggested Clarke as the fittest person for the vacant post, but Sir C. Hotham did not take the hint. There was a minor cause of discontent. He accompanied the Governor in his tour to the gold-fields in 1854. On his return he submitted an account demanding £200 for his personal expenses during the ten days occupied in the journey. The Treasury being at the time well-nigh bankrupt under Mr. Childers' Imprest system and a wasteful expenditure, Sir Charles Hotham was startled, and recommended that the matter should be submitted to the Travelling Expense Board. (Of that Board the writer of this book was one.) Subordinate officials had to submit vouchers for travelling expenses. Heads of Departments were allowed two guineas a day when travelling. The Board recommended that Captain Clarke should have the option of submitting vouchers or taking the usual allowance. He vainly appealed for special grace to the Governor; and when Sir C. Hotham died the account for £200 was submitted with a number of others to the Acting Governor without explanation, and passed without inquiry.

right conferred political power upon the worst characters at the gold-fields it was not unnatural, albeit unwise, for others, equally ill-fitted, to claim like privilege, and the Legislature showed no disposition to withstand the claim. To strengthen the stakes of the Constitution—to win as many as possible to the ranks of those interested in the welfare of the country—was the plain duty of a statesman. The Commission inverted their duty. They proposed to make no distinction in favour of the industrious citizen, the settled head of a family, and the loose hordes at the gold-fields containing convict waifs from Tasmania.[1] They trod with hesitating steps over the ashes of conflagration and strife at Ballarat. The "whole case of the Eureka riot" was of "a most untoward character." They agreed "generally that since the popular excitement had culminated in that absurd and criminal procedure (the erection of the stockade) the prompt attack on the morning of the 3rd was a movement alike well-timed and executed" . . . although they were "not entirely unanimous that even at this stage there should have been on the part of the authorities a deliberate shedding of human blood." They thought the crisis "would have been differently or more opportunely met had there been no military arm to rely on" . . . the arm of the Government "may not fail them, it is true; but it may occasion the evil as well as effect the cure."[2] They regretted that the Government had not acceded to their request (10th January) for a general amnesty, and thus "closed a dark and reproachful incident with

[1] It is notable that the Chairman of the Commission was one of the most pertinacious of the opponents of Transportation, and supporters of the Victoria law to prevent the influx of criminals from Van Diemen's Land. Yet, he was equally eager to confer the franchise on those criminals when they became possessed of a Miner's Right, which it was well known that thousands of them possessed in 1854. The strange contradictions of mankind are to be observed in the fact that, smarting under the very name associated with transportation, the Legislative Council in Van Diemen's Land (October 1854) petitioned the Queen to change the name of the island to Tasmania. The Queen graciously accorded the boon. Thus while Tasmania enfranchised herself from the *name*, the Gold-fields' Commission strove to enfranchise the *thing* amongst themselves.

[2] Without giving their *ipsissima verba* it would be impossible to convey an idea of the rambling manner in which Messrs. Westgarth, Fawkner, Hodgson, O'Shanassy, and Strachan, involved themselves in a labyrinth by shrinking from pronouncing judgment which might be unpopular.

the causes of which the Government themselves were not entirely unconcerned, and which there is perhaps a good ground of hope may never occur again." Their lengthy suggestions on departmental and financial changes, individual mining, puddling machines, quartz crushing, and mining partnerships, it is needless to dwell on. With regard to the Chinese, whose violent expulsion from Sandhurst in June 1854 had been contemplated by certain agitators, they recommended that a fine of not less than £10 a head should be imposed for every Chinese immigrant arriving in excess of the number of hands requisite for the crew [1] of a vessel.

Three measures were passed shortly after the Commission made its report. On the 20th April an Act imposing an export duty of two shillings and sixpence an ounce upon gold [2] was assented to by the Governor. On the 12th June, an Act was assented to by which the gold-fields were to be regulated. With one pound sterling paid for his miner's right any unattached adventurer acquired all the gold he could find (subject to the export duty) on Crown lands. By the same easy process, and as an incident to that self-prompted effort, he acquired equal electoral power to that of steady farmers who had borne the burden and heat of early colonization,

[1] The subject was deemed important at the time. It was feared that the colony might be over-run by the Chinese. Sir Charles Hotham was among those who were anxious. Recognizing the risk of collisions such as that averted by Mr. Panton at Sandhurst he created a Chinese Protectorate, so that, through interpreters and a trustworthy officer, some control might be exerted by the Government over the Chinese—generally an industrious and harmless body.

[2] As if instinctively conscious that good order could not serve its purposes, the 'Age' traduced the Legislature for accepting the Bill. "The people should have been consulted. The press unanimously and energetically condemned ... The Government have made matters worse, not better, between them and the diggers." There was only one consolation; it would be impossible to "carry out the law they have taken so much pains to place on the Statute-book." ('Age,' 16th April, 1855.) On the 16th May, commenting on the frequent transitions at the Colonial Office, it urged (in capital letters) immediate action. "Fellow-colonists! you see how your interests are trifled with in England. Don't you think that the time has come when we should prepare to take the business entirely into our own hands?" It had previously proposed that as the Draft Constitution awaiting the Royal Assent in England was "unfit for the use of a free people," the colonists (not the local legislature) should meet and draw up a fresh one.

and were rearing families in homes which every riotous neighbour became a potential factor in governing. The very taxes paid by the industrious were to be wrung from them, not by the votes of their brother-yeomen, but by the clamour of the idle and disreputable, who were ready at any moment, as events proved, to flit in thousands to California, Queensland, or New Zealand, to gather gold. The Gold-fields' Act did not confer the franchise, but it fixed the amount of the license, and the Draft Constitution had attached a vote to the license.

The Act provided local courts, the members of which were to be elected, and were with the chairman (appointed by the Governor) to adjudicate upon disputes about mining claims. Some wholesome occupation was thus put within reach of the residents of the gold-fields. Another Act, not recommended by the Commission, was passed to prevent disturbances of the public peace, such as the burning of the Eureka hotel. Juries were to find whether a district was in a disturbed state. The Governor could proclaim a district pronounced to be in such condition; and machinery was provided by which property destroyed in the district was to be paid for by the inhabitants. The passage of this Bill was denounced in unmeasured terms by the 'Age' newspaper; but though there was some opposition, representative members were not deterred from assisting the Government.

It was on the amnesty question that the Governor found his Commissioners, the press, and popular petitions most urgent. The 'Age' was frantic in its terms. At the close of the year it was embarrassed, and announced in sorrow that its publication would immediately cease. The original proprietors were supposed to be respectable and law-abiding. They could hardly look hopefully on the articles with which their literary servants filled their pages. Pecuniary profit from such a source would have been a doubtful advantage. But there was no profit. The plant and copyright fell into the hands of the persons employed, and they attempted to carry on the undertaking by association amongst themselves.[1] Their literary staff remained. They

[1] They carried it on, but not profitably, until two brothers named Syme purchased the paper. One of them had been a violent writer in it, simultaneously with contributing articles to the 'Argus,' of which he was the stipendiary.

loudly demanded the recall of Sir Charles Hotham. On the 2nd January, 1855: "Never once, even by accident, has he been right." On the the 6th (respecting the Ballarat rebellion): "Of the newspaper press the 'Age' alone was not panic-stricken."[1] It followed with flattery every symptom of reviving disaffection. Humffray, Gibson, and Wanliss were present at Ballarat "on behalf of the diggers" during the sittings of the Commission of Inquiry. They reported to a public meeting (6th January) of their friends out of doors, and were thanked. Mr. C. F. Nicholls proposed a petition for a general amnesty. Holyoake, though he seconded it (*vide* 'Age') said he was sick of the word 'constitutional.' Maugre his protervity a new Victorian Reform League was formed "for the carrying out of an organized and purely constitutional agitation." Holyoake, Humffray, and others were appointed amongst its managers. The cry for an amnesty thus put forward at the scene of armed rebellion was echoed elsewhere. The day after the Ballarat meeting was reported in the 'Age,' the Gold-fields' Commission besought the Governor to grant a thorough amnesty, and they allowed their entreaties to become public.

On the 13th January a meeting was held in Melbourne. Dr. Embling was in the chair. Mr. David Blair was as violent as before. Mr. Aspinall, a brilliant barrister, supported him. The 'Age' on the 15th held up to execration the Governor and any juryman who would find the prisoners guilty. It declared that it was notorious that the Commission had "powerfully urged the propriety of proclaiming an amnesty. If they be found guilty then may heaven help the Executive Government of Victoria." But neither the *ardor civium* nor the infinitely *pravior* malignity of the press intimidated the Governor. In reply to the petition he informed a deputation that the causes assigned for the outbreak, even if they existed, could in no degree justify the commission of crime with which the unfortunate persons in custody were charged. No one more regretted than he the loss of life, but he "should ill perform his duty to his country if he neglected to bring to justice those misguided men who have been induced to take up arms against the

[1] Writers in the 'Age' were active disturbers out of doors.

constituted authorities. He is not, therefore, prepared to acquiesce in the prayer of the memorialists."

A meeting was called to consider the reply. Reeking, probably, from the composition of an article for the newspaper, Mr. Blair reposed his hopes in a determination of a jury to acquit without reference to evidence. Sir C. Hotham was an arbitrary despot, and "the best thing for himself and the fools who sent him here was for him to pack up his trunks and leave Victoria." He asked the meeting to resolve that "acquittal is better than amnesty," and that "in every case an acquittal will be the result of these trials." Messrs. Humffray and Nicholls published a long narrative of their reception when presenting a petition from Ballarat. The narrative was an array of their own arguments. They averred that the Gold Commissioners were really the rioters, and that the capture of the Eureka stockade was "cruel slaughter" and "petty official revenge." Amnesty meetings were held in various places. It was evident that the pupils of Dr. Lang were, in the press and on the platform, combining with the accomplices of the prisoners to overbear juries when they found the Governor unshakeable. The 'Age' grumbled at the postponement of the trials till February. Akehurst was acquitted and Seekamp was convicted in January (18th and 23rd). There was but one crumb of comfort. Dr. Lang, prosecuted for malicious libel on the Chief Justice, was acquitted on the 20th. The 'Age' expressed its satisfaction.

In February the Eureka prisoners were brought to the bar. After the usual forensic fencing, in the course of which the cases of Raffaello, Hayes, and Manning were postponed, the negro Joseph was placed at the bar. There were numerous challenges before a jury could be sworn. Joseph's identity and his complicity in the stockade on the 3rd December were clearly established. It was shown that the insurgents fired a heavy volley without challenge or parley. No evidence was called for the defence. A foregone conclusion was in men's minds. The turbulent element which made demonstrations against law and order, as well in Melbourne as on the gold-fields, was in the ascendant. The amnesty petitions, and the recommendation of the Gold Inquiry Commission; the ferocity with which the 'Age' predoomed to execration any juryman who would convict

any of the prisoners; the evil reputation of the Government, so vacillating in 1851, so indeterminate as to an export duty in 1852, so feeble in 1853, and, apparently, under the new Governor, so ruthless in wiping out the blunders of past weakness; an unsettled temper in the public mind of a people which numbered, in 1855, five times as many as were in Victoria in 1850, and included, amongst the new men, ex-convicts who had smarted under law; foreigners who had fled in fear of law; socialists who theoretically defied it; Americans who preferred to it that lynch law which the 'Age' had formally pronounced "generally unexceptionable in principle;" finally, an insatiable greed to follow unchecked by any authority the absorbing pursuit which had attracted to the colony the great majority of the *novi homines;*—these, and kindred impulses which deserve not the name of considerations, warped most men's minds in one direction.

The counsel for the poor negro (H. S. Chapman and B. C. Aspinall) ridiculed the idea that he could have harboured treasonous designs to depose the Queen; riotous perhaps he might have been, but high treason was beyond his ken; they sneered at the indictment, as they would on some other ground have sneered at it if it had been differently framed. The jury, after a brief retirement, returned with the expected verdict. Shouts of frantic exultation rang without the Court. Within there was loud cheering. Two men, Gorton and Keogh, were committed to gaol for a week by the Chief Justice, for contempt, with the remark that if the jury had done their duty the applause was an insult; if not, the demonstration must be a reproach. When the unconvicted rioter emerged from the Court he was received by Her Majesty's natural subjects as though he were an angel of light. It was an honour to grasp his hand. The 'Age,' as if oblivious of the intimidation brought to bear upon jurymen, extolled the verdict as "spontaneous and righteous," and called on the Government to abandon the prosecutions.

But the trials were proceeded with. John Manning, the 'Ballarat Times' reporter and prompter, who had displayed such abject terror when captured that his dupes shrunk from contact with him, was defended by Mr. A. Michie, who argued that the

soldiery attacked the stockade, and there could be no treason in defence. The previous organization, and arming, and the fact that a deadly volley was poured upon the military before they fired a shot, had been proved; but the jury were impervious to proof, and ready to respond to the eloquence of the advocate with whom they agreed beforehand. No evidence was adduced for the prisoner, and he was acquitted. The Attorney-General stated that the remaining cases would be submitted to another panel, and the Court was closed. The Governor wrote that it was "considered expedient to postpone the trials of the other prisoners until the next session, in order that in cases of such importance to the country the opinion of a jury taken from another panel might be obtained as to the guilt or innocence of the accused."

Hayes, who had been chairman of several meetings of the Reform League, which preceded the military organization, was arraigned on the 19th March.[1] He was defended on special grounds. It was averred that he was not in the stockade, and that he had risked his own life in dissuading the violent leaders from a resort to arms. He had been arrested about 200 yards from the stockade after the other prisoners had been collected. His counsel said, "Admitting him to be there, for the sake of argument, I say it is not high treason. It was a riot or a misdemeanour if you please, but it was not high treason."

Witnesses were called. Amongst them was the Roman Catholic priest, Rev. P. Smith, who had accompanied Raffaello and Black, when they demanded the release of the prisoners captured for resisting the police on the 30th November. He swore that he was twice with Hayes in the stockade on the 2nd, that Hayes went with him as a protector, and that his own object was to dissuade the rioters "from the movement they were on." Very early on the 3rd Hayes was at Mr. Smith's house, and told him that some person wanted him at the

[1] The trials of Joseph and Hayes were reported in full by the Government short-hand writer, and copies of the reports were sent to England by the Governor. The other trials were briefly reported in the newspapers. Amongst the successful counsel for the prisoners was Mr. R. D. Ireland, whose accession to the ranks of the seditious confederation in Ireland in 1848 is recorded by Duffy (of the 'Nation') in 'Four Years of Irish History.' 1883.

stockade. A messenger had been sent by Lalor. He went thither and saw Hayes arrested. During the Judge's charge Hayes interrupted the Judge, without rudeness but with much feeling, to declare for the sake of his "wife and six children," that he almost risked his life "to get the people to go to their peaceful homes."

After a retirement of half an hour the jury returned with a verdict of not guilty. Hayes immediately addressed a crowd outside the Court. They gave (the 'Age' reported) three cheers for Hayes, groans for the Governor, for the Attorney-General, and for the 'Argus'; "and a scream of uproarious cheering was raised for the 'Age.'"[1] Raffaello was acquitted on the 21st March, and cheered by an outer crowd. A Dutchman, Jan Vennick, was similarly dealt with on the 22nd, two others were tried on the 23rd, and the triumphant Raffaello was in the Court nodding and smiling to them. They were acquitted, and were cheered out of doors. On the 26th one of the prisoners was discharged, the Attorney-General having decided not to prosecute him. The trial of the remaining five was completed on the 27th March. The jury retired for seven minutes only. The populace was sated with triumph, or had no special affection for the acquitted men; for the cheering was faint, although some friends shook hands and marched with them to a house in a back street, to talk over the past or to indulge in dissipation.

Again the 'Age' declared: "The people have triumphed." One thing vexed its inky soul, and also that of Raffaello. How, when the armed bands of rebels were so numerous, had Captain Thomas dared with 152 foot soldiers, 30 mounted soldiers, and 94 policemen to attack their entrenchment. Vanity compelled the belief that there must have been treachery.[2] But until the prisoners had been acquitted it was perhaps deemed unsafe

[1] 'Age,' 21st March, 1855.

[2] Raffaello published a narrative of the Eureka stockade (1855). It was on sale at the office of "J. M. Grant, solicitor," and elsewhere. Raffaello said that "on the day of judgment it will go milder with the Emperor Nicholas than with the man, whoever he be, that prompted and counted on the Eureka massacre. . . . Who was the accursed old fox?" At page 71 Raffaello stated that a rush was made eastward (by the rebels) "and a whole pack cut for Warrenheep." He said the "red-coats were some three hundred strong."

to boast that but for treachery the rebels would have struck down the authority of the Queen. When juries had pronounced finally, the 'Age' asserted that there had been a traitor in the stockade, and that the wily Governor had so manœuvred that 400 men were sent by the insurgents from the stockade in order that Captain Thomas might massacre the remnant.

Various other authorities have been careless in accounts of the Eureka affray.[1] But the 'Age' did not indulge in vain regret. Emboldened by the triumph of lawlessness in the Courts of the colony it assumed an air of dictation. On the 3rd April, it suggested that Sir C. Hotham was useless, and the colony ought to have "a mercantile Governor." On the 9th Mr. David Blair devoted columns of large type to an attack upon Edward Wilson, of the 'Argus,' for whom Blair had written violent articles during an employment of two years, but whom, as soon as Blair went over to the 'Age,' he accused of "repellent insolence and brutal insult."

The incensed penman was not aware that by such wrangling he was at last doing service to the State. Men began to think it unseemly to submit to the guidance of such advisers. The 'Age' also exhibited one of its moving motives too broadly to be mistaken. On the 18th April, one leading article denounced the Governor, because (the vote being already allocated) he declined to devote to the 'Age' a requested payment for Government advertisements. On the same day it condensed

[1] It is somewhat surprising to meet in a 'History' of Ballarat (W. B. Withers, 1870), mis-statements as to facts. It is said that the prisoners —"so grim sometimes is the irony of the Fates,"— were acquitted "on All Fools' Day." Yet the last acquittals were chronicled in the Melbourne newspapers of the 28th March. Mr. Withers agrees with the idea that there were not very many rioters engaged—"over a hundred armed men" at the stockade. But the military captured 125 persons; from 20 to 30 were killed; and there was a stampede of fugitives. Mr. Withers corrects McCombie's error that "the repulse at the stockade did not depress the diggers, and a body of about 1000 armed men was at this time (6th December) collected together on the Creswick Road." Mr. Blair, in his 'Cyclopædia of Australasia,' 1878, transcribed McCombie's error. Yet Mr. Withers had in 1870 exposed it thus,—McCombie "is wrong as to the diggers not being depressed by the affair at the stockade. The action of Sunday entirely demolished the schemes of the insurgents. There was no such gathering, either, on the Creswick Road as that mentioned by McCombie." 'History of Ballarat,' p. 80. W. B. Withers. 1870.

the wrongs of itself and of the people by declaring that "the real remedy for grievances and wrongs embraces both the dismissal of Sir C. Hotham, and a *revised* new Constitution, and both these (the people) *will* have—or *else the alternative.*" Men who sympathized with what they called liberal opinions were nevertheless disinclined to struggle for advertisements for a newspaper. Any sacrifices they might be called upon to make required a worthier altar. But the result of the trials aroused serious reflections amongst those who deigned to reflect. Trial by jury, the glory of England, had not itself received a fair trial. Open intimidation, in the press and in the crowd, had been brought to bear. The doctrine had been openly broached that the rioters were not only entitled to complain, but right in the revenge which they plotted, and which Sir Charles Hotham and the capable Captain Thomas had frustrated.

The verdicts of the juries, albeit perhaps wrung from them under coercion, seemed to imply that the Government which the 'Argus' had striven to bring into contempt was despised as well as hated.[1] The jurors were drawn from the artisans and the dwellers in the suburbs. But for the intimidation which had been practised, it might have been thought that the general population had become maddened with a lust for anarchy. It was not apparent, but it was true, that the prime movers of disorder were men who, having no grievances themselves, goaded others to acts of violence, and that gratuitous mischief was as sweet to them as the gratification of revenge. Sir Charles Hotham told the Secretary of State (3rd April, 1855) that there was

"serious cause for reflection. It is evident that in political cases, according to the present state and practice of the jury law, an equit-

[1] On looking at three of the jury lists, I find carpenters, butchers, gardeners, and small farmers preponderating. There was one baker, one saddler, one carter, one painter. There were two storekeepers and two stonemasons, &c. These men were assuredly no participants in conspiracy. They wished to condemn past misgovernment and a vicious system of collecting revenue. The embryo Clodii and venal scribes who hatched the new Constitution of 6th December, had not ventured to submit it to the public. Sir Charles Hotham stood in the way; and though they knew there was widespread discontent, they distrusted their ability to organize it so as effectually to serve their purpose.

able decision is, I fear, hardly to be expected. . . . So transparent was the determination of the jury, that after Raffaello's acquittal . . . it was urged that justice was held up to derision and mockery, and that it would be most prudent to desist. But in this opinion I could not share. If juries would not do their duty, I could discover no reason why I should not do mine. I deemed it of the highest importance to prove that the common law of the land in political cases was insufficient. I thought that every means should be taken to show reflecting and sensible men that in times of danger they must choose their side, and I felt that to obtain this decision I must exhaust every effort which could be compassed. I fervently hope that the proposed alterations in the laws regulating the management of the gold-fields will produce peace and contentment amongst that branch of the community; but there are peculiar elements in that society which forbid over-confidence. It will be my endeavour to conduct the administration of this colony with regard to the interests of all classes, but it is a bad omen for society when ordinary justice no longer avails."

The substitution of the peaceful Custom-house for an armed policeman's visitations, as the means of collecting the gold Royalty, effected an immediate revolution. The Gold Export Duty Act was passed on the 20th April, 1855. On the 2nd July the Governor was able to report that "the duty has been easily collected, and a greater revenue than was anticipated has been derived." On the 23rd November, 1855, in opening the Legislative Council, he was able to congratulate that body on the satisfactory state of the gold-fields, where "good order and quiet" prevailed. Nevertheless, it was significant, though he did not allude to the fact, that when under the Act to regulate the gold-fields, the holders of miners' rights met to elect the members of the Local Court at Ballarat, they chose the riotous Carboni Raffaello without dissent. While a member of the Court he was active (with a majority) in preventing lawyers from practising before it. Compensation had been impartially awarded to sufferers during the riots, and Raffaello formally applied for a sum of money which he was unable to prove that he had lost.[1] He was informed that the property found on him

[1] While still in gaol, awaiting trial, Raffaello and others applied for writing materials and "snuff and tobacco to cheer their prison life," and "soothe that mental irritation consequent upon seclusion." They were then aware that out-of-doors they were looked upon as popular heroes, and

was "a wide-awake hat or cap, a red shirt, corduroy or moleskin trousers, and a pair of boots." He retorted in a printed narrative that he had been robbed "by British troopers and traps." His election as a member of the Local Court effectually extinguished his pretensions to save society. It was soon seen that he was as useless as he was prone to disorder, and he disappeared from public view. His career is worth mentioning only to show how vile a thing had been made to seem precious in the eyes of the exasperated miners, who speedily remitted him to neglect as soon as a post of business had proved him. But the old fervour had left sparks which could be rekindled; and, under the new Constitution, in 1856, Lalor was elected a Member of Parliament for a district contiguous to Ballarat, Humffray for Ballarat East, and Cathie, the bold speaker (at Melbourne on the 5th December, 1854), was elected for Ballarat East in 1859. Black, the delegate, who demanded the release of prisoners, was less fortunate. He received only 24 votes when Humffray was preferred at Ballarat East in 1856 with nearly 700 votes.[1] It may be mentioned that after the acquittals of the Ballarat rioters in 1855 no steps were taken to apprehend their accomplices who were in hiding. The amnesty was complete, though not formally proclaimed.

Vern, who had fled, returned to Ballarat, and was sentenced to imprisonment there in 1856 for "rioting." His patriotism on that occasion had taken the form of threatening any one who would dare to prevent him from filling up a hole sunk by another miner. Although Raffaello pleaded that he had nothing to do with the defence of the stockade, he railed bitterly at Vern for running away. His vocabulary of abuse of his old associate is not worth transcribing. He summed it up by calling him "Charles Hotham's footman," but he did not directly accuse him of the treachery to which he and others attributed the loss of the stockade. Some idea may be formed of the amount of business transacted in the Local Courts at the gold-fields, from the fact that in little more than a year and a half the Ballarat Court adjudicated on about 1600 cases.

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that juries were threatened with pains and penalties if they should dare to return a verdict of guilty whatever might be the evidence. Mr. Stawell was burned in effigy at Sandhurst about the same time.

[1] Black afterwards lived in privacy, and died almost unnoticed in 1879.

After the creation of two Houses, the legislation of 1855 was amended in 1857 by an Act of 132 clauses, which created Courts of Mines to displace the Local Courts. Judges with legal qualifications were appointed. Their decisions were subject to appeal to the Supreme Court. The practice in their own Court was to be analogous to that in the Court of Appeal. Disputes about claims had become intricate, and the interests involved were sometimes very large. The Court could deal with all suits "cognizable by a Court of Equity." The Judge could determine alone, but could call in six assessors. He could grant injunctions to restrain working on a claim. "Wardens of the gold-fields" were appointed to exert immediate and direct authority on the spot, in prevention of encroachment. They also could call "indifferent persons" to their aid as assessors. From their decisions there was an appeal to the Court of Mines in the district. It is noticeable that those who had officiated as Gold Commissioners were in all cases appointed wardens in the several districts, and that in four large districts resident wardens exercised supervision over wardens.

Mining Boards were also created. All holders of miners' rights or business licenses were electors of the Boards. The Board had power to make bye-laws for "determining the quantity and form of land occupied for mining purposes" . . . the events on which the title to any "claim" might be forfeited or deemed abandoned, and "the mode in which claims shall be worked." Their bye-laws were to be sent to the Chief Secretary of the Government, and were to have no force until twenty-one days had expired after publication by him in the 'Government Gazette.' On complaint to the Chief Secretary by persons aggrieved, it was made lawful for the Governor in Council to revoke any bye-law. Without such a power of revocation it was seen that a heterogeneous discord of codes might create confusion. Even with that power it was found that inconvenient variances existed, and many former advocates of Local Courts arrived at the conclusion that a general code applicable to the whole colony would be advantageous.

Various Acts were required to remove doubts as to the validity of mining regulations and bye-laws, and further to regulate the gold-fields. At length, in 1865, a consolidating and

amending Act was passed under which a "Chief Judge of Courts of Mines," who "shall be a Judge of the Supreme Court of Victoria," was to be appointed by the Governor in Council. The Judge selected was Robert Molesworth. To say that he was known to be incorruptible would be faint praise. In the colony, as in England, incorruptibility had long been deservedly associated with all Judges, chosen as they have been from an array of distinguished members of the Bar. But it may be said that the legal and equitable acumen of Robert Molesworth, combined with his uprightness, gave assurance that no search abroad could have obtained for mining litigants a worthier Judge than the one who became Chief Judge in the difficult and peculiar cases brought before him in Victoria.

It is needless to dwell at length on the 246 clauses contained in the Act of 1865. It dealt with miners' rights, with leases of reservoirs, licenses to cut water-races, gold-mining leases, mineral leases (for other metals than gold), and the election and functions of Mining Boards. Their power to make bye-laws was extensive, but no bye-law was to be operative unless certified by the law officers of the Crown as "not contrary to law." Courts of Mines were continued, and they had power to call upon any warden, surveyor, or registrar, to perform his duty. The duties of all were declared in detail in the Act. Mining on private property was long a bone of contention. Owners of auriferous lands hoped to establish their title to gold found on their property. After the substitution of a customs' levy for a personal payment by the miner, it was of little importance to the Government whether the freeholder or the miner's right holder, extracted the gold. But "prospectors," as searchers for gold deposits were called, averred that a freeholder ought not to be able, like a dog in the manger, to exclude miners from his freehold. On some occasions there were attempts to invade freeholds. There were always men ready to urge the miners to acts of violence. But it could scarcely be maintained that to enter upon a freehold and undermine a field, perhaps a house, was to be the right of any adventurer who might plead that he was searching for gold. The subject was touched upon in a perfunctory manner by the Commission, of which Mr. Westgarth was chairman in 1854.

"In order to avoid confusion as to what may or may not be such (auriferous) lands, and to save the authorities from the determination of a very doubtful question, the Commission recommend that auriferous lands as such should not be alienated by the Crown." They advised that,—"although only as a general rule, private proprietors be chargeable with one-half the rates now recommended with reference to Crown lands for lease, or for other special arrangement."

How jejunely they inquired was shown by the fact that they did not call upon the Geological Surveyor for information.

Captain Clarke, the Surveyor-General, informed them (12th January, 1855), that he had never sold land knowing it to be auriferous, but that "of course lands have been sold in which gold has been found." He did not tell them that the Geological Surveyor's remonstrances had been set aside, and their inquiries did not elicit the fact. It will be remembered that Lord John Russell instructed Sir George Gipps to convey to purchasers everything in the land, and that the necessary regulations were promulgated in Sydney. Buyers were, however, as ignorant as Lord John of the consequences which the regulations involved, and did not insist that grants should conform to his intentions. As the Crown could not be bound except by express words, the intentions were in only a few cases complied with. The Sydney Legislature accordingly assumed from the first the power to deal with gold found on private lands; so far as fixing a Royalty was concerned. The Commission examined Mr. Stawell, who told them that the buyer in purchasing lands did not acquire a right to take the gold, but that it would be "a most dangerous principle to recognize in any way" a right for others to enter on private lands to seek for it. He saw no grievance to others in the fact that a freeholder could mine for gold on his own land on the same terms as those on which ordinary miners could mine on Crown lands. The Commission put many questions, both to him and to Captain Clarke, which showed that ill-feeling had already sprung up, and that the question was intricate, but they did not summon to their aid the accomplished geologist who was modestly surveying the colony, and who had often vainly endeavoured to prevent unwise alienation of auriferous lands. There were two recommendations in their report which deserve to be put side by side. "Auriferous lands as such,

should not be alienated from the Crown."[1] . . "If lands by hundreds of thousands of acres are insufficient for that purpose, (breaking down a land monopoly) they must be brought forward by millions."[2] Such random incongruities could not solve the difficulty of dealing with gold on private lands. Sir Charles Hotham adverted to it at a later date (21st November, 1855), as

"yet to be solved; and I fear, should the miner be prohibited from pursuing the vein of rich quartz wherever he finds it (due compensation being awarded to the owner for any damage done to his property), that a general outcry will be raised against possessors of landed property, the result of which no man can foresee. To guide such a movement will be entirely out of my power. The Constitution will have introduced self-government, and on the people themselves will rest the responsibility of adjusting that most difficult question."

A part of his prognostication was nullified by events. The mining population, estimated in 1855 as exceeding 100,000, gradually dwindled as the yields from surface-mining became less attractive. The declension was rapid and continuous. The pursuit of gold was in time followed by companies which took leases and applied extensive machinery in crushing gold-containing quartz. Many of them were conducted honourably and well; some were bubble-companies. Speculators of questionable probity were concerned in them; and such men, to intimidate owners of auriferous lands, or levy blackmail from their fears, kept up an agitation on the subject of mining on private lands. But instead of drilling excited crowds, or forming barricades, they became strategists in the Legislature, and the art which was known as "log-rolling" supplanted the contrivances of 1854. The diminution of the numbers engaged in actual mining may be briefly stated. The lucky first-comers had, in 1852, though less than 40,000 in number, scraped together 2,738,484 ounces of gold. In 1853 more than 3,000,000 of ounces were obtained.

The accurate Mr. Latrobe estimated the mining population in the Mount Alexander district alone as 60,000 in May 1853. Forty thousand of them were at Sandhurst. The hungry crowds when they had grasped the gold nearest to the surface spread abroad, and railed at the Government for demanding a

[1] Paragraph 137. [2] Paragraph 44.

license fee; for not making roads, and for every grievance to which a houseless adventurer was subject. There was, without doubt, a diminution in the amount of gold procured. Some disappointed miners recurred with more or less discontent to the employments which they had previously abandoned. The Commission of 1854 computed that there were in August only 77,000 miners on all the gold-fields. With them were about 17,000 women, and 18,000 children. There was a decrease in the recorded exports of gold in 1854, but it was believed that much was carried away unrecorded. The number of ounces obtained in 1853 was never equalled afterwards.[1] There was a similar proof in New South Wales of the lavish manner in

[1] The recorded quantities were:—

In 1851	145,137	ozs.	in Victoria.	In 1865	1,543,188	ozs.	in Victoria.
1852	2 738,484	„	„	1866	1,478,280	„	„
1853	3,150,021	„	„	1867	1,433,246	„	„
1854	2,392,065	„	„	1868	1,634,200	„	„
1855	2,793,065	„	„	1869	1,337,296	„	„
1856	2,985,735	„	„	1870	1,222,798	„	„
1857	2,761,567	„	„	1871	1,355,477	„	„
1858	2,528,227	„	„	1872	1,282,521	„	„
1859	2,280,717	„	„	1873	1,241,205	„	„
1860	2,156,700	„	„	1874	1,155,972	„	„
1861	1,967,453	„	„	1875	1,095,787	„	„
1862	1,658,281	„	„	1876	963,760	„	„
1863	1,627,105	„	„	1877	809,653	„	„
1864	1,545,437	„	„	1878	775,272	„	„

('Victorian Year-book,' 1878-9.)

It is needless to enumerate the annual results in other colonies; but the following summary (from 'Heaton's Australian Dictionary of Dates,' 1879) may be found interesting:—

Gold Production in	Victoria	to 31st Dec.	1878	48,012,670 ozs.
„	New South Wales	„	„	8,846,990 „
„	Queensland	„	„	2,993,482 „
„	Tasmania	„	„	66,510 „
„	New Zealand	„	1877	8,959,452 „
„	South Australia	„	„	7,508 „

The total exportation from New Zealand from 1857 to 1860 was only 35,843 ounces. The discovery of the Otago gold-fields raised the exportation to 194,234 ounces in 1861. The largest exportation in one year was 735,000 ounces in 1866. As in Australia, it was by the early gold-seekers that the largest quantities of gold were obtained. From 1871 the gold exported from New Zealand declined gradually from 730,000 to 310,000 ounces in 1878.

which gold was scattered on the surface of the earth. The yield of the New South Wales gold-fields in 1852 was larger than in any after-year.

But though the appropriation of the gold passed from the hands of miners on the surface to the coffers of associations, the members of companies strove for many years, and with some success, to persuade the dwellers on the gold-fields that to guard from abuse the privilege of entering on private lands to seek for gold was an act of oppression. It was like the Deceased Wife's Sister Bill in the House of Commons. The majority of Englishmen did not desire that it should be passed. The majority of English women were against it; but a few active expectants persuaded friends to support their views as liberal. The cry stood for the fact. So in Victoria at one time there seemed a prospect that a successful cry might be raised against the Legislative Council, because they refused to pass the Bills for mining on private property which certain intriguers steered through the Assembly with professions of public liberality to cover their lust for private gains. But the stars fought against them. The multiplication of freeholders augmented the number of those who doubted whether it was proper to subject an honest neighbour to vague inroads upon his homestead. The abstract question of the purchaser's title to the gold in his land was eventually settled in favour of the Crown on appeal to the Privy Council. After that date those who had opposed former Bills expressed a willingness to accept the main principle; and when a member of the Council, Mr. Wallace, practically acquainted with the subject, took it up, amended a Bill (in a manner not accepted by the Assembly), and in the following session re-introduced his measure and procured its transmission to the Assembly, it became difficult to raise a public cry against the Council on the subject.

But before the acquisition of gold fell chiefly into the hands of companies, there was some risk of collision with marauding miners who traced, or thought they traced, "a lead of gold" to the boundary of private property. Then it was found that the sad example at Ballarat and the legislation for the gold-fields had borne fruit.

Sir Charles Hotham was able to report (21st November, 1855),

that the Local Courts were serving their purpose of preventing direct shock between the miner and the Government officer, although they wanted improvement, and that "instead of a restless discontented body, the miners have lately shown themselves attached to the local authorities, and indisposed to violate the law." Assistance was offered to the Government if it should be required. On two occasions when "'a rush,' as it is called here, was made by the miners on private property to work the vein, they retired as soon as the warden informed them of the nature of the law, and of the resolution of the Government to enforce it." Such and so rapid was the change which the character of the Governor, and a different method of levying a Royalty, produced in little more than one year.

The transfer of the contention from the field to the senate did not completely change the character of the combatants. When those who had been rioters at Ballarat were chosen (by a suffrage not then universal though soon to be made so) as legislators, misrule might be anticipated. On the subject of gold it was soon declared that the Royalty on gold was a tax, and not a petty payment for property acquired, and that the noble destiny of Victoria could be attained most quickly by swelling the number of ounces of gold discovered. Thus, by degrees the export duty was abolished altogether.[1] The influence which effected this change effected others which may be told briefly elsewhere. One thing more may be mentioned to illustrate the manner in which the gold of Victoria was sought and found. It was often asserted that in the aggregate the gold obtained cost more than it was worth at the Mint. The assertion cannot be sustained by proof. That many miners and companies worked without profit is true. But some derived enormous gains which, like fortunate lottery-tickets, drew others to the pursuit. Yet it is true that if a spirit hovering over the earth had seen the scores of thousands, grimy with clay, and eager, even when weary, to scrape together a few more ounces of the coveted ore,

[1] It was maintained in New Zealand long after its abolition in Australia. It had been made over by the General Government as a source of provincial revenue. The abolition of Provinces left Provincial Districts in existence, and the General Legislature, though desirous to imitate the example of Australia, knew not how to find a substitute for local wants, and therefore unwillingly maintained the export duty.

and had been told that their common object was to increase the export of gold and diminish the cost of obtaining it; after a glance at the scene, he would have been driven to exclaim with Puck, "Lord, what fools these mortals be." Shaft upon shaft, tunnel upon tunnel, some utterly useless, and always more numerous than necessary, pierced the earth. Millions of money were absolutely wasted because, though all had agreed that to gather gold cheaply was the highest good for man, their methods were such as to prevent it from being so gathered.

It is time to turn from Victoria to neighbouring Colonies, one of which, South Australia, displayed such sagacity and energy in dealing with the forlorn condition with which she was threatened, that although at first it seemed as if the migration to the Victoria gold-fields would leave her without the means of industry, she plucked from the nettle danger the flower safety, and rose renewed in strength by a successful endeavour to attach her people to the soil.

Her first impulse was like that in Victoria when Hargraves showed with his Californian cradle how gold could be washed out of obscure dirt in New South Wales. A reward of £1000 for the first discovery of a profitable gold-field was offered on the 17th December, 1851. The test was to be the raising of gold of the value of £10,000 within two months of the issue of licenses by the Government. The Legislative Council recommended the reward on the 12th December. The Executive Council on the 16th passed resolutions to meet the "crisis" impending over the colony from the "numerous migrations in progress, unless means of prevention be timely adopted." It was contemplated to arrest the immigration from England conducted partly at the cost of the land fund, but the Immigration Agent doubted the wisdom of checking that source of supply, and the Governor, his Council, and "a large majority of the community were" (he wrote 26th December, 1851) "desirous that it should be retained." There were then stagnation and depression in Adelaide, but they had not affected the rural districts. On the 30th December, illusory hopes were created by reports that gold had been found in the spurs from the Mount Lofty Range, near the Onkaparinga river. Mr. Bonney and Mr.

Herschell Babbage were deputed by the Government to examine the site, and saw some specks of gold procured on the 29th December. A second examination, which failed to produce a trace of gold, led to suspicion that the specks previously found had been placed there by hand, and the Colonial Secretary notified that no discovery had been made of sufficient importance to "render necessary the issuing of licenses to dig for gold." But dismay was in men's minds when they saw the male population moving from the colony. The streets were deserted, houses were abandoned, property was utterly unsaleable, business was strangled. The runaways carried with them almost all the coin of the colony. The banks, drained of gold, contracted their paper circulation. "At this time" (according to a grave report of the Chamber of Commerce), "ruin was staring every one in the face." There was dread of a run upon the three banks, whose aggregate specie was little more than £20,000. Bills on England, previously at par, sunk to a discount of four per cent. General insolvency seemed at hand. To meet "the appalling crisis" (as the Chamber of Commerce styled it) the Government consulted the Chamber of Commerce and the Bank managers. A strange phenomenon was seen. Some miners returned with gold of a reputed value of £50,000. They could not sell it. The banks refused to advance upon it, "with a view to protect the legitimate exports."[1]

The Colonial Secretary ascribed "the impending crisis" to "two causes,—the influx of gold-dust and the migration of the population." After earnest conference it was determined to summon a special session of the Legislative Council, and to propose the establishment of an Assay Office where ingots might be stamped. Banks were to be authorized to issue notes against such ingots, which were to be valued at seventy-one shillings an ounce. They were to retain such ingots as bullion so long as the notes issued against them were in circulation. The notes were to be a legal tender. The Council met on the 28th January. The Governor informed them that, though he did not coincide with the common expectation that legislation could provide speedy relief of depression, he yielded to urgent

[1] Letter from Manager of Union Bank, 13th January, 1852. Parliamentary Papers, vol. lxiv. 1853.

representations in summoning them. The Bill was intended—pending the importation of coin of the realm—"to uphold the solvency of the Banks against the probable results of a drain of their coined specie, to alleviate the inconveniences of an alleged scarcity of the circulating medium; and to encourage the return to the province of those persons who may have procured gold in the adjacent colonies, and who may desire to invest it in South Australia." The Governor thought it "safe and innocuous." The Council thanked him. The Bill was passed and became law on the day of meeting (28th January). It was to expire in a year. Its speedy acceptance was attributed very much to Mr. George Tinline, the manager of the Bank of South Australia. His admirers, when its benefits had been universally recognized, presented him (April 1853) with a purse of two thousand guineas and a silver salver with a centre-shield of Victorian gold, to commemorate his services, the whole testimonial being valued at £2710. Mr. Herschell Babbage became Government Assayer. The law officers reported that the Act would be legally operative unless disallowed by the Crown. But a new Manager of the Bank of Australasia protested against it (2nd March) as "unsound in principle and impracticable in operation." He (Samuel Tomkinson) prayed that the Legislature might be convened to repeal or amend it, and thus avert evils which would "cause greater injury, confusion, and danger to the community ultimately than would have occurred had the said Act not been passed." The Colonial Secretary (4th March) denied the alleged precipitancy of the measure, which, though rapidly passed, had been maturely considered, and was approved by Tomkinson's predecessor, and by the local directors of his Bank.

Sir John Pakington, on the 16th October, 1852, announced that he did "not propose to interfere with the temporary measure, which was adopted by the local legislature in order to meet a crisis of peculiar urgency and danger; which has worked hitherto in a satisfactory manner; and which appears to have met with almost unanimous approval in the colony." He pointed out some objections which it would be well to remedy in case of a renewal of the measure on its expiry, and hoped that the large exportations of coin then in progress, and perhaps the

establishment of a Mint then under consideration, might render a renewal unnecessary. His tenure of office expired in December 1852, but his successor, the Duke of Newcastle, did not reverse his decision. On the 3rd January, 1853, he congratulated the colony on the effective character of the measures adopted, and the energy of the community in seconding them. When the Governor expressed (16th May, 1853) his great gratification at the commendation bestowed by the Colonial Office upon the measures adopted during the financial crisis in the colony, he was able to report that in an amending Act the suggestions of Sir John Pakington had been borne in mind. A further change was made by the coining of gold tokens, representing twenty shillings each, at a standard of £3 11*s.* for an ounce of gold. This was authorized in October 1852, under the power given in the original Act to make and stamp "ingots of a convenient size." The Legislative Council prayed the Governor to make the change, and he complied. He sent five specimens of the tokens (2nd October) to the Colonial Office, and requested that their realized value might be handed to the Colonial Agent-General on account of the colony. In November 1852, it was thought desirable to amend the law. The gold tokens (of "five pounds, two pounds, one pound, or ten shillings, as such Government Assayer may deem fit") were made a legal tender, and the Banks were no longer in danger. The effect of the Act may be summed up in the words of the Chamber of Commerce (August 1852). It "was little short of miraculous. Credit and confidence were almost instantaneously restored." Paper under discount decreased, deposits were speedily doubled, circulation was extended still more largely, cash payments became the rule instead of the exception.

Critics in neighbouring colonies did not view the Act favourably. When it was passed the current price of gold was low. Shipments to Europe had not revealed the intrinsic value of the Australian ore. Even in the older colonies the principal buyers had been deemed speculative when they strained their own resources and those of the Banks in obtaining advances to buy gold at prices varying from £2 upwards, per ounce. When South Australia passed the Ingot Act, and fixed the standard at £3 11*s.*, the market price in Melbourne was £3; in Sydney it was £3 3*s.*

Mr. Westgarth, Chairman of the Melbourne Chamber of Commerce (1st April 1852), declared in an address to that body that the difference in price must in the end act injuriously to South Australia. For this and other reasons he condemned the Act. In 1853 he expressed his surprise that it had been sanctioned in England. By that time his previous prophecy of evil to South Australia from the enhanced price conferred upon her ingots had been falsified by events. The price in Sydney and Melbourne had risen higher than the standard in Adelaide, and the re-action he expected did not appear. By that time also South Australia had committed another "irregularity." She had coined her gold tokens. Mr. Westgarth expected inconvenience (which never arrived) from the fact that a British sovereign, though intrinsically worth no more than a token, was by reason of superior uses abroad worth one shilling more than a token. He thought the English Government could hardly have had the facts before them when they assented to the Act; if they had, they had displayed incompetence.

The vigour of South Australia attracted by the end of 1852[1] no less than 570,000 ounces of Victorian gold. If any portion was due "to the operation of the Gold Act we have (Mr. Westgarth said) seen sufficient of that innovating experiment, its deceptive operations . . . its direct variance with all commercial principle—to enable us to pronounce its condemnation."

The South Australians were content to be condemned while contemplating their revived prosperity. They falsified evil prophecies by extending the time during which liabilities might be paid in bullion,[2] and sat secure while their fall was predicted. It was not only by means of their Gold Act that they contended with the threatened desertion of their territory. It will be remembered that there only, on Australian soil, had the colonists retained a tincture of Gibbon Wakefield's principle of demanding

[1] Westgarth's 'Victoria,' p. 176. 1853.

[2] The Bank of Australasia laboured against the Government. It refused to grant its own notes in exchange for Government bullion, but availed itself of the privilege of paying its own liabilities in the bullion. On the suggestion of Mr. Tinline (South Australian Bank) and Mr. James Blackwood (Union Bank) the Act was widened, so that the patriotic institutions might not be suddenly left with a plethora of unexchangeable ingots, and compelled to pay all demands in coin.

a price for land in order to ensure its application to healthy uses. Though not a "sufficient price" it had a wholesome tendency. A numerous agricultural class was in process of formation. The Government could supply its needs without restraint from the vicious Orders in Council which South Australia had rejected. She had begun to export bread-stuffs in 1850. She had carried off, against world-wide competition, the highest prize for wheat at the Great Exhibition in London in 1851.

It was not without a pang that her leaders saw her hardy denizens tramping or voyaging by thousands to Victoria. The Gold Act was no sooner passed than Mr. Tolmer, the Commissioner of Police, was despatched overland to the Victorian gold-fields. The Deputy Surveyor-General had been sent on the 28th January to cut a convenient road through "the dense matted scrub known to extend for the first hundred miles of the journey," from Wellington on the Murray river to Mount Alexander. He was to sink wells also. He had an Australian black with him to aid in the search for water. In April, Sir H. Young was able to report that in the 127 miles separating Wellington from the Victorian border nine wells had been sunk, in seven of which there was "good fresh water." Mr. Tolmer, with a native and two constables, left Adelaide on the 10th February. On the 11th he ascertained that the improvised caravans with which the colonists were moving to Victoria made the crossing-place at the river Murray a melancholy sight: 164 vehicles of motley description, 1234 passengers, 1266 horses and bullocks, had been ferried over in eleven days. Unless they could be won back it would be little consolation to know that they had paid tolls amounting to more than £64, as they shook off the dust of South Australia. They went by a circuitous route where water was procurable. Mr. Tolmer started by compass to find a shorter way by which they might return. He pierced through the sterile tract in which the Surveyor was at work, and passing Mount Arapiles, reached a country abounding in the homesteads of squatters. In eight days he was at Mount Alexander. Crowds of South Australians greeted with joy his offer to escort their earnings to Adelaide. On his first trip he returned with 6000 ounces, and no charge was made for trans-

port. The second escort took back 19,235 ounces, the third 28,206 ounces. The charge made was two per cent., or one shilling and four pence an ounce, and was gladly paid. Mr. Latrobe courteously gave facilities for the operations of the startled South Australians. A special Commissioner was appointed to collect gold for the escort. He was nominated by Sir H. Young, but appointed by Mr. Latrobe, and was subordinate to the latter, though South Australia was to refund all costs incurred. The temporary flight of her manhood paralyzed but did not destroy permanently the ordinary industry of South Australia. Like their fellows in Victoria squatters lost their shepherds. Sir H. Young stated (June 1852) that upwards of 200,000 sheep were "in charge of shepherds who are aborigines." Still the migration to Victoria prevailed. Agriculture ceased. Exports of breadstuffs were augmented, but they consisted of stock in hand attracted by the exorbitant prices ruling in Victoria. The statistical tables of 1851-2-3 are a blank as to agriculture.[1]

But the resiliency of the occupation had been guaranteed by the measures of the Government. The decline in the revenue in 1851 was corrected even before the end of 1852. In 1853 it more than doubled the receipts of 1851. The fortunate miners not only sent large remittances to their families, but invested in land in their old home. Eighty-two thousand acres had been sold by the Government for £88,740 in 1851. In 1853 they sold 213,925 acres for £291,660. In 1854 a similar quantity realized £383,470. Victorian gold purchased South Australian land. For several subsequent years a somewhat less area was disposed of, but it far exceeded the quantity sold in 1851, and in 1864 the sales of 1854 were surpassed. In like manner the imports, which had declined from £845,000 in 1850 to £690,000 in 1851, rose to £798,000 in 1852, and to £2,336,000 in 1853. After a subsequent diminution they also were swollen by the increased wealth of the community, and in 1863 exceeded £2,000,000, not again to fall below that amount.

The export trade exhibited corresponding results. Under

[1] 'South Australia.' W. Harcus. 1876. Published (in London) by authority of the Government of South Australia.

the article of bread-stuffs exported may be read the success of the efforts of 1852 to retain an agricultural population.

The export began in 1850		with		...	...	£38,000.[1]
In 1851 it	was	...	...	...	...	73,000
1852	„	...	...	...	...	212,000
1853	„	...	...	...	...	257,000
1854	„	...	...	...	...	316,000
1855	„	...	...	...	...	236,000
1856	„	...	...	...	...	556,000
1857	„	...	...	...	...	755,000
1858	„	...	...	...	...	525,000
1859	„	...	...	...	...	554,000
1860	„	...	...	...	...	499,000
1861	„	...	...	...	...	712,000
1862	„	...	...	...	...	633,000
1863	„	...	...	...	...	747,000
1864	„	...	...	...	...	1,464,000

It was not unnatural that amongst a people attached to the soil there should be a jealousy of interference with private property in it. Colonel Robe's attempt to exact a Royalty on minerals had signally failed in the copper period. Sir H. Young encountered difficulties in the age of gold.

In August 1852, a miner claimed the offered reward of £1000 for discovering a profitable gold-field at Echunga (in the Mount Barker Ranges), twenty-three miles from Adelaide. About three hundred licenses were issued in the first month and some gold was obtained, but not enough, in Mr. Babbage's opinion, to constitute the place a profitable field. The miners diminished in number. In March 1853, sixty-three petitioned for a reduction of the license fee. The Governor refused. One license only was taken for March 1853.[2] Nevertheless the Government introduced a Bill to regulate the search for gold, as well on private as on public lands. It was provided that no person should search for gold on private property without a license from the owner. But the Legislative Council were so

[1] Fractions of thousands are omitted. Bad seasons caused fluctuations in the export. After 1864 there were variations, but in 1875 the value was £1,680,996.

[2] Parliamentary Papers, vol. lxiv. p. 156. 1853. A reduction to ten shillings a month was asked for. On discovery of a gold-field, to reward their labours, the miners would "be agreeable to pay a higher charge when exacted."

averse from the Bill that a second measure was prepared. It failed to propitiate them. The Governor reported that the rights of the Crown to gold on private lands were not admitted by the Council.

The Duke of Newcastle refused to "admit the existence of any well-founded doubt of the strict legal right of the Crown to the precious metals;" but as he could not pretend that an Englishman's freehold could be invaded in searching for them, his opinion was vain. The control of the gold had been remitted by Sir John Pakington to the local legislatures; and the Adelaide Legislature was, if not paramount, a necessary factor in making a law upon the subject. The knot was one which did not require to be cut. Nature had so ordered affairs that up to the present time no profitable gold-field has been found in the southern part of the colony. The Duke of Newcastle abstained from urging the adoption of measures unacceptable to the local legislature. It is sufficient to allude to the subject briefly as an illustration of the spirit in which the public men in Adelaide strove to conserve for the colonists those rights to property which they had so vigorously assisted freeholders to procure. The crisis caused by the exodus of labour and of capital to Victoria was met and conquered by measures as sudden and complete as the crisis itself.

On the 3rd February, 1853, Governor Young closed the Assay Office as no longer needed. Crude gold had risen in the general market, and was worth more than the price fixed by law as its exchangeable value in the shape of gold-tokens. The legal compulsion ceased simultaneously with the mercantile fact. The temporary Gold Act expired on the 28th January, 1853. The Banks notified that they would receive gold at £3 14*s.* per ounce. The Assay Office was closed just after its receipts had fallen below the minimum prescribed. It had in one year received raw gold valued (at £3 11*s.* per ounce) at £1,462,836. Its revenue had been £13,846; its expenditure, £8748. The discovery which threatened to ruin the colony had been converted into a far more substantial benefit than had been derived in the gold territory. Even the Assay Department yielded a profit in Adelaide, while in Victoria the general administration was embarrassed.

Worse than all financial difficulty in the latter colony was the

degradation of character in the population. The evil-minded had laid claim to power by means of lawlessness: the foolish, in the name of liberality, had consented. Weak men had stood aside, yielding to that subtle tyranny of opinion which so subjugates the mind that it dares not to say what it believes to be right, and will for peace' sake link itself with wrong. The worst class of those who flocked to Victoria from Adelaide probably remained among congenial associates, so that South Australia perhaps refined herself by the loss of social dross.

In Tasmania the thoughtful Sir W. Denison apprehended (August 1851) risk of famine prices for food if agricultural labourers should, by flocking to the gold-fields, diminish the production of grain. Members of the Anti-Transportation League feared that unless gold could be found in the island the best labourers would desert it. Even if it should be found, the Governor thought that convicts ought still "to be sent to the colony." Their labour would be the only means of raising food, and he was prepared to control them. The discovery of gold in Victoria impelled him to urge that the whole sum "voted by the House of Commons for emigration "to Australia" should be spent on emigration to Tasmania. He rejoiced to say that no gold had been found there. He did not seem to anticipate that immigrants from England would on landing in the island become emigrants to Victoria; but in June 1852 he wrote:[1] "The place is becoming nearly depopulated; one-third of the whole male population has already deserted, and more keep going every day."

Some fortunate miners returned with their profits, and lived so riotously upon them as to make the inhabitants of Hobart Town commiserate the dwellers in Melbourne. The prompt manner in which on more than one occasion Sir W. Denison sent troops to prevent disorder in Victoria has been already detailed. He had his local troubles at the beginning of 1852. The first Legislative Council containing elected members had then met, and the representatives were stubborn to do away with transportation. Fortunately for Sir W. Denison, Sir John Pakington was as prompt as Wentworth and others to recognize the absurdity of transporting convicts to the vicinity of gold-

[1] 'Varieties of Vice-Regal Life,' vol. i. p. 192.

fields; and the sweeping away of the system soon left the islanders at liberty to concert with the Queen's representative measures necessary to ward off evil consequences which, though not so overwhelming in Tasmania as in South Australia, disturbed public and domestic economy.

The Legislature offered a reward (£5000) for the discovery of a profitable gold-field; but for many years they were so fortunate as not to find it, and were compelled to nourish Spartan virtues because nature had denied them the means of dissipation. Some gold was found in various places. The principal site was at Fingal, but official returns showed a yield of only 77 ounces there in 1852. The total yield from 1852 to 1858 was only 804 ounces, of which the highest production in one year was 270 ounces in 1856.[1] Sir W. Denison saw that the available capital in the island might be augmented by the overflowings of Victoria, but how the needs of the colony could be supplied while its male population were in Victoria he could not see. In May 1852 he repeated his petition for immigrants. He sent lists of prices of food and clothing. In twelve months many articles had risen a hundred per cent. One—tanned leather—had risen 433 per cent., and those who had friends to appeal to wrote to England for their boots and shoes. He still hoped that transportation would be continued, although the Legislative Council boldly denounced it.

One allegation in an address (17th March, 1852), portrays the state of the community. The census of March 1851 showed a population of 70,000, the males being 30,769. Between the 1st January and the 30th June, 1852, more than 10,000 rushed to Victoria. The Council averred that on "31st December, 1851, there were 20,069 convicts in the colony, and that the number of policemen now employed is 446, of whom no less than 332 are themselves convicts." Even in diminutive Norfolk Island the gold-fields caused commotion. Mr. Price, Civil Commandant, reported (15th March, 1852),[2] that the "greater portion" of the officers would quit "on the first opportunity" unless their pay should be increased. Some left. A restless

[1] In later years other deposits were found. In 1878 a profitable site, as regards the shareholders, was worked near the Tamar river. In about a year less than 7000 tons of quartz yielded more than 18,000 ounces of gold.

[2] Parliamentary Papers, vol. lxxxii. 1853.

spirit pervaded convicts and custodians. The determined Price was compelled to resort to increased corporal punishment. He had 950 convicts on the island, most of them of the most depraved class, the scourings of the crime of dominions on which it had become the current phrase that the sun never set. Like pitch the miserable felons begrimed all with whom they came in contact. Their island lair was awful as one of Dante's circles,—an abyss of unutterable horror.

The Governor called on Mr. Price to explain, and was satisfied with the explanation; but told Earl Grey that it would be better to break up the establishment at the island, and to form at Tasman's Peninsula "such an ultra-penal system" under the immediate eye of the Government as would dispense with the necessity of maintaining the island prison. Sir John Pakington approved. To lighten the Governor's troubles he also authorized the Emigration Commissioners to despatch free emigrants to Tasmania on a larger scale. Until moved by the Governor's prayers he had sent no free labourers thither, "because it was supposed that they would immediately emigrate to the adjacent colonies where wages were so much higher." That result was still probable; nevertheless, Sir J. Pakington felt bound to keep faith with the colonists, and to apply on their behalf a portion of Earl Grey's "free emigration" vote, available for colonies which might accept convicts.

In August 1852 Sir W. Denison, while asking for free emigrants, demanded convicts also. "To whom" but convicts could colonists look "to cultivate their lands, to tend their flocks, to reap their harvest? . . Should the emigration (to Victoria) continue at the present rate, it is difficult to say at what point the rise of price caused by a deficient supply both as regards labour and the necessaries of life will stop." So overwhelming was the pressure that though the Southern Tasmanian Council of the Australasian League solemnly protested against the landing of each cargo of convicts on arrival, the Governor was able to point out that each ship-load was promptly hired maugre the resolution of the League that none should be employed in private service.[1] The only comfort which the Council of the

[1] "In advocating the continuance of transportation (Sir W. Denison wrote, 30th August, 1852), I know I am laying myself open to the imputation

League could find was in the fact that Earl Derby had, out of office, declared that Earl Grey had committed the Government to the discontinuance of transportation; and the further fact that no man doubted Lord Derby's word.[1] They were right to trust him, and though his Administration was brief, yet as Earl Grey did not return to power, and Lord Aberdeen's Ministry announced, through the Duke of Newcastle, that they would adhere to Sir J. Pakington's declaration, and put "an end at once to the removal of convicts to Tasmania," the colonists were left at liberty to apply their energies to recognized local requirements in conjunction with a Governor whom they deemed capable, and whom they respected even when they differed from him.

The task was hard. There was neither sufficient money nor labour. Public works were arrested. Household expenses were reduced. Gardens were allowed to run to ruin. In a private letter (May 1853) Sir W. Denison said: "In fact this discovery of gold has turned us topsy-turvy altogether: that good will result from it in the long run I do not doubt . . but the present good is obscured and hidden by so much that is evil as to make

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of wishing to sacrifice the great principles of morality to a petty and paltry expediency, but I deny for myself and for that respectable and influential minority in this colony who assent to my views, that we either wish or do make any such sacrifice." Parliamentary Papers, vol. lxxxii. 1853. The Governor's personal character was held in so much respect that many who differed from his views were on terms of courtesy and intimacy with him. His Solicitor-General, Francis Smith, refused to take office without full freedom to oppose transportation. Far from distrusting an open opponent, the Governor appointed Mr. Smith an official member of the Legislature, "in order to have the benefits of his talents and power as a debater in the various questions" to be discussed in the new House.

[1] Lord Derby maintained his reputation. On 14th December, 1852, Sir J. Pakington announced that steps would be taken to abolish transportation to Tasmania as soon as possible. Her Majesty's Government were anxious to comply with the wishes of the colonists: it was a solecism to convey offenders at public cost with intention at no distant time to set them free in the immediate vicinity of gold-fields, which "thousands of honest labourers in vain" strove to reach. Sir W. Denison was complimented on his excellent government in the past; but it was "a source of much gratification (to Sir John) to convey a decision so much in accordance with the strongly-expressed wish of the colonists." . . . "I trust they may recognize in it the desire of the Government to consult their wishes, and to strengthen their loyalty to the Crown, and attachment to the British Empire."

many question its existence."[1] Such was the condition of the island home of Britain's criminals in 1853. There were some colonists so grateful for the Governor's exertions and practical ability that they prayed for his retention in office beyond the ordinary term. They provoked others to send a contrary prayer, signed, like the first petition, by more than 2000 persons. It cannot be said that either petition prevailed, though the kindly one was more graciously received than the other. The Governor remained in office about two years longer than the customary period, and then succeeded Sir Charles Fitz Roy, whose tenure in New South Wales had also been prolonged.

Western Australia demands only a passing glance in connection with the gold discovery. Her population only increased by the importation of convicts (and emigrants sent out at Imperial cost); but it was not easy for the convicts to escape. Few ships called at her ports, and the arid deserts which divided her from the eastern colonies were a barrier which no convicts could cross. Even the sea-coast afforded no hope; for the perilous journey of Eyre from Adelaide to King George's Sound was a household story in those days. Yet Perth was moved. In March 1852 fourteen persons fled from it to Melbourne, and Governor Fitzgerald deplored "this manifestation of feeling at a moment" of progress and prosperity. He would rigidly prevent emigration, as far as he could, by enforcing the provisions of the Passengers Act. His efforts were vigorous but vain. On the 11th September, 1852, he reported that three hundred adults had run away, and that seventy more were going in one vessel. "I feel assured that one-half of the free population would quit the colony had they the means of paying their passage to Melbourne." A small Government vessel was sent to Adelaide, partly to restore Bishop Short to his home after an ecclesiastical tour, and partly to procure provisions. At Adelaide the mate and the whole of her crew ran away to the gold-fields, and the disconsolate commander wrote that he could hire no substitutes except at the cost of £9 or £10 a month, with a guarantee of a return passage to South Australia. Governor Fitzgerald sent for a Malay crew from Singapore.

A brief description of Western Australia, undertaken at the

[1] 'Varieties of Vice-Regal Life,' vol. i. p. 212.

suggestion of the Colonial Secretary,[1] declares that such was the frantic excitement in 1852 that "at one time it seemed probable that the colony would be entirely deserted." For a time the unhappy colonists were content with the fate which made their land the only receptacle for convicts. Unclean as were the hands, they did some work. Their control required also Imperial expenditure. From the commencement of the experiment in 1850 to the end of 1855 the Secretary of State thus summed it up:

Transported in 1850	384	Imperial expenditure	1851	£12,000
,, 1851	878	,,	1852	86,600
,, 1852	442	,,	1853	65,100
,, 1853	1192	,,	1854	76,765
,, 1854	280	,,	1855	82,060
,, 1855	485			£322,525
	3,661			

Moreover, 2310 free immigrants were sent out at Imperial cost during the same period, and 1476 (including their families) were despatched as military pensioners. Whether the settlement could have been maintained without help from Britain, or whether it would have been, as the local chronicler feared, "entirely deserted," can only be surmised. That it was entirely sustained by the mother country is beyond doubt. Some of the criminals worked after their kind in Western Australia as in the other colonies. We find the Secretary of State[2] expressing "serious regret and displeasure" at the outrages committed upon the natives by the holders of tickets-of-leave or of conditional pardons. He hoped that offenders would be punished with the "greatest rigour which the law will allow." But the nature of the case was such that usually the only witnesses of the crime were the criminals or their victims.

Whatever the convicts were, it was felt that the colony could not live without them. No sooner was it reported in Western Australia that it had been announced in Parliament that transportation to Australia would at once cease, than the Governor represented (8th June, 1853), that the tidings had "produced one universal feeling of alarm and despair." Meetings were held at Fremantle and Perth. Memorials were signed by the free

[1] 'Western Australia,' p. 4. By W. H. Knight. Perth: 1870.

[2] Sir W. Molesworth. Despatch, 20th September, 1855.

settlers. It was asserted that transportation to their colony was less alloyed with evil than elsewhere. Its cessation would rob offenders of a field for honest employment, and "at this peculiar conjuncture, with reference to the gold-fields of Port Phillip, prove absolutely ruinous to the inhabitants" of Western Australia. The Governor affirmed that 99 out of 100 inhabitants in the colony apprehended "ruinous results" from the stoppage of transportation, and the Duke of Newcastle assuaged their grief by replying: "I can assure you that no idea is entertained at the present time of ceasing to send convicts to Western Australia."

With this brief glance at the western colony, and a few general remarks, the account of the gold discoveries may close. The convicts could not pierce the desert which was to test the courage and resources of future expeditions. They would have wandered from Western Australia if they could; but the land defied them, the ships which left Perth were few, and it was difficult to escape the vigilance of the officers who searched for runaways secreted on board. Western Australia derived none of the presumed advantages which extended to the immediate neighbours of the gold-bearing colonies. But, in compensation, she lost few of her people. The bond were restrained by law; the free by inability to defray the cost of escape from their sandy prison. The effect upon prices in Victoria and in New South Wales was as marked as it was inevitable. At the first wild rush to the gold-fields it was feared that houses in the metropolis would cease to be in demand; that suburban lands would cease to be cultivated. Men who had burned kilns of bricks sold them for a few shillings to hesitating speculators whose money furnished the sellers with a scanty equipment for the gold-fields. Ere long the speculators reaped a golden harvest. Rents in Melbourne and in Sydney rose eight or nine hundred per cent. The rates of wages made it costly to build. Materials for building came from far, and commanded enormous profits. House-owners found a paltry income swollen to unhoped-for dimensions. Land shared the general enhancement. Men who had bought at £5 an acre were able to sell at £500 in the distant suburbs. In town thoroughfares the value of land, sold by the foot, exceeded many times its former value by the half-acre. Nor was the change confined to realty. Personal property endured

a like conversion. Men who picked up gold by uncounted ounces lived as luxuriously as their labour permitted. Meat and vegetables transported to the gold-fields enriched their lucky owners. One market gardener made £2000 out of onions carted to Sandhurst. Graziers who drove stock to, or speculators who procured sheep or cattle for, the markets at the gold-fields wondered at their own wealth. Other markets rose while pressure, as though hydraulic, extended throughout the colony. Cunning speculators succeeded. Active men without sagacity did the same. One (a rather unsuccesful man before) of weak mind, but energetic frame, found room for the idea that by purchasing cattle for re-sale he could make money at the gold-fields. He did so, and repeated the experiment. Before the value of stations rose he was enabled to buy more than one, and became rich. Dissipation followed, but he returned to Ireland boasting that he would buy an estate. He thought his success, instead of being thrust upon him, was the fruit of wisdom. His miserable end showed how little was due to any good quality. Debauched, and duped by one whom he attempted to dupe, he died in a disgraceful condition which was exposed in the law courts; and the share of Australian gold which he had scraped together became a mine of wealth for Irish lawyers to delve in for years. The instances of wealth accumulated in unworthy hands in the colonies were numerous. Fortunately there were exceptions. Some men gallantly kept their hands at the plough, striving to redeem the land from the wilderness of weeds against which Chief Justice A' Beckett warned the colonists in Victoria. But politically and socially there was ample proof that the warning was needed. As the fever had been fiercest in Victoria, so were its effects more widely felt, and the very compactness of the colony, which facilitated its material advancement, conduced also to the rapidity with which evil influences coursed through it. Rich land, and a gracious climate, adorned the colony named after the Queen. An unsettled population, the lust for gold, a culmination of the Manchester theory of the highest good for men and nations—a belief that "the infinite celestial soul of man is a kind of hay-balance—for weighing hay and thistles, pleasures and pains" [1]—so afflicted Victoria that for

[1] Carlyle.

a time she was an object for pity or regret. Unfortunately in some of her acts she set an example which infected her neighbour New South Wales as soon as the temperate counsels of Deas Thomson and the solid sense of Wentworth were withdrawn, and inferior men bore sway. In later years like causes produced like effects in New Zealand, whither, after the discovery of the Otago gold-fields in 1861, a horde of gold-diggers rushed from Victoria,[1] and there inflicted upon their second temporary home similar evils to those which they had inflicted upon their first.

Meanwhile, with the worse elements of her national life, England sent the better. Not only the energy, but the virtue of her worthiest children of all classes was represented in Australia. In the wearer of the mitre and the worker with the spade might be found noble types of the highest forms of English life. Every religious denomination has supplied heroic champions to do battle with the spirit of evil; and though it be a duty to record the troubles of the past, it is grateful to acknowledge the efforts made to remedy them, and to wish God speed to those who have upheld, and still uphold, the banner of righteousness in the land.

[1] There was a singular exodus from Victoria in 1858. A discovery of gold at the Fitz Roy river distracted thousands of gold-hunters to Port Curtis. Ten thousand were there in October, of whom four-fifths had abandoned their electoral control over the destinies of Victoria. When they had thus proved their unworthiness, the Government in Victoria, which included at that time Charles G. Duffy, vied with them in unfitness by sending a steamer to carry back those who would avail themselves of the offer. Sir W. Denison writing on the subject groaned: "The Government, if it can be so called, is in such dread of these people, that instead of opposing the evil which is sapping the foundations of society, it pats these fellows on the back, feeds them at the expense of their better-behaved industrious neighbours, and brings them back to play the same trick again as soon as an opportunity offers." ('Varieties of Vice-Regal Life,' vol. i. p. 454. Sir W. Denison.) The opportunity was offered in New Zealand in 1861, and Sir W. Denison's prophecy was fulfilled.

END OF VOLUME II.

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